

**UNITED STATES
CIRCUIT COURT OF APPEALS
FOR THE NINTH CIRCUIT.**

— 18 —

CENTRAL CALIFORNIA CANNERIES COMPANY,	Appellant,
vs.	
DUNKLEY COMPANY (Now Known as MICHIGAN CANNING & MACHINERY COMPANY) and DUNKLEY COMPANY,	Appellees.
GRIFFIN & SKELLEY COMPANY,	Appellant,
vs.	
DUNKLEY COMPANY (Now Known as MICHIGAN CANNING & MACHINERY COMPANY) and DUNKLEY COMPANY,	Appellees.
J. C. AINSLEY PACKING COMPANY,	Appellant,
vs.	
DUNKLEY COMPANY (Now Known as MICHIGAN CANNING & MACHINERY COMPANY) and DUNKLEY COMPANY,	Appellees.
ANDERSON-BARNGROVER MANUFACTURING COMPANY,	Appellant,
vs.	
DUNKLEY COMPANY (Now Known as MICHIGAN CANNING & MACHINERY COMPANY) and DUNKLEY COMPANY,	Appellees.
GOLDEN GATE PACKING COMPANY,	Appellant,
vs.	
DUNKLEY COMPANY (Now Known as MICHIGAN CANNING & MACHINERY COMPANY) and DUNKLEY COMPANY,	Appellees.
J. F. PYLE & SON, INC.,	Appellant,
vs.	
DUNKLEY COMPANY (Now Known as MICHIGAN CANNING & MACHINERY COMPANY) and DUNKLEY COMPANY,	Appellees.
HUNT BROTHERS COMPANY,	Appellant,
vs.	
DUNKLEY COMPANY (Now Known as MICHIGAN CANNING & MACHINERY COMPANY) and DUNKLEY COMPANY,	Appellees.
SUNLIT FRUIT COMPANY,	Appellant,
vs.	
DUNKLEY COMPANY (Now Known as MICHIGAN CANNING & MACHINERY COMPANY) and DUNKLEY COMPANY,	Appellees.

**NOTICE OF MOTION AND PETITION FOR LEAVE TO FILE IN
THE SOUTHERN DIVISION OF THE UNITED STATES DIS-
TRICT COURT FOR THE NORTHERN DISTRICT OF CALI-
FORNIA, SECOND DIVISION, AN ORIGINAL BILL IN THE
NATURE OF A BILL OF REVIEW.**

Filed

W. J. CARR,
FREDERICK S. LYON,
FRANCIS J. HENEY,
KEMPER CAMPBELL,
Solicitors and Counsel for Petitioners.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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United States Circuit Court of Appeals for the
Ninth Circuit.

HUNT BROTHERS COMPANY,

Petitioner,

vs.

DUNKLEY COMPANY,

Respondent.

Notice of Motion.

To Dunkley Company and Michigan Canning & Machinery Company, and to Messrs. Fred L. Chappell and W. A. Richardson, Counsel and Silicitors for said Companies:

YOU AND EACH OF YOU ARE HEREBY NOTIFIED that on February 6, 1922, at the hour of 10:30 A. M., or as soon thereafter as counsel can be heard, in the courtroom of the above-entitled Court in the United States Post Office and Court-house Building in the City and County of San Francisco, California, Hunt Brothers Company will move the Court for an order permitting it to file a bill in the nature of a bill of review to have reviewed, reversed and set aside that certain interlocutory decree made and entered in the United States District Court for the Northern District of California, Southern Division, Second Division, on December 8, 1916, in the case of *Dunkley Company*, Plaintiff, vs. *Hunt Brothers Company*, Defendant, Equity No. 211, and to that end will present the petition for such leave accompanying this notice.

Said motion will be based upon the matters and

things set forth in said petition, and on the record in the above-entitled Court, of *Central California Canneries Company*, a Corporation, *Griffin & Skelley Company*, *J. C. Ainsley Packing Company*, *Anderson-Barngrover Manufacturing Company*, *Golden Gate Packing Company*, *J. F. Pyle & Son, Incorporated*, *Hunt Brothers Company*, *Sunlit Fruit Company*, a Corporation, Appellants, v. *Dunkley Company*, a Corporation, Appellee, No. 2915, including the record on appeal to said Court from the order of said District Court granting the motion of the Dunkley Company for a substitution or addition of parties plaintiff, and upon the record in this Court of *Dunkley Company and Michigan Canning & Machinery Company*, Plaintiffs-Appellants, vs. *Pasadena Canning Company*, and *George E. Grier*, Defendants-Appellees, No 3316.

W. J. CARR,
FREDERICK S. LYON,
FRANCIS J. HENEY,
KEMPER CAMPBELL,
Solicitors for Petitioner.

In the United States Circuit Court of Appeals for
the Ninth Circuit.

HUNT BROTHERS COMPANY, a Corporation,
Petitioner,

vs.

DUNKLEY COMPANY, a Corporation,
Respondent.

**Petition for Leave to File in the District Court
of the United States in and for the Northern
District of California, Southern Division, Sec-
ond Division, an Original Bill in the Nature
of a Bill of Review.**

To the Honorable Judges of said Court:

Hunt Brothers Company, a Corporation, presents this its petition against Dunkley Company, a corporation, and respectfully shows:

I. Proceedings had in cause sought to be reviewed:

(a) On or about August 6, 1915, Dunkley Company, a Michigan corporation (but not the same Dunkley Company named as the respondent herein), filed in the District Court of the United States in and for the Northern District of California, Southern Division, Second Division, its bill of complaint against Hunt Brothers Company, a corporation, the petitioner herein, for infringement of patent No. 1,104,175, and in which it is alleged that on and prior to November 29, 1904, Samuel J. Dunkley had invented a machine covered by said patent, and that prior to the issuance of said patent, the said Dunkley had sold and assigned to the plaintiff in said bill of complaint, the said invention and application, together with such letters patent as might be granted thereon. Said bill of complaint further alleged infringement of said patent by the defendant therein, and prayed for an injunction against further infringement, and for profits realized by the defendant and damages sustained by the said plaintiff by reason of such infringement.

(b) Thereafter, to wit, on or about October 14, 1915, Hunt Brothers Company duly filed its answer to said bill of complaint, and in said answer, among other defenses, denied that the said Samuel J. Dunkley was the original or first inventor of said alleged invention, and alleged that the said Dunkley surreptitiously and unjustly obtained the patent for that which in fact was first invented by another, to wit, G. E. Grier, who at all times was using reasonable diligence in adapting and perfecting the same.

(c) Thereafter, to wit, on March 24, 1916, said case duly came on for trial in said District Court on the issues made by the pleadings therein. Proofs were adduced to by the parties, and thereafter, to wit, on April 6, 1916, the case was submitted to the Court for decision.

(d) Thereafter, to wit, on December 4, 1916, the Judge of said District Court orally announced his decision in said case, to the effect that the said patent was valid and infringed; thereafter, to wit, on December 8, 1916, an interlocutory decree in said case was duly made and entered, adjudging and decreeing that the said defendant had infringed said patent and that it be permanently enjoined and restrained from making, using or selling any machine or other device infringing said patent, and further adjudging and decreeing that the said plaintiff recover from said defendant in said case the profits realized by the defendant, and the damages sustained by the plaintiff, by reason of said infringement, and that the cause be referred to H. M. Wright, Esq.,

Standing Master in Chancery of the court, for an accounting of such profits and damages.

(e) Thereafter, to wit, on or about December 27, 1916, the defendant in said case appealed from said decree to this court.

(f) Thereafter, to wit, on or about October 1, 1917, the said decree of the District Court was affirmed by this Court.

(g) Thereafter, to wit, on or about May—, 1917, said Hunt Brothers Company petitioned the Supreme Court of the United States to issue its writ of certiorari to review said order of this court in said case; and said petition was thereafter on or about December, 1917, denied by said Supreme Court.

(h) Coincidentally with the filing of said bill of complaint against Hunt Brothers Company, as alleged in subdivision (a) of this paragraph, said Dunkley Company filed in said United States District Court, similar bills of complaint against Central California Canneries, Griffin & Skelly Company, J. C. Ainsley Packing Company, Anderson-Barnbrover Manufacturing Company, Golden Gate Packing Company, J. F. Pyle & Son, Inc., and Sunlit Fruit Company. The defendants in each of said cases filed answers to said several bills of complaint similar in form and effect to the said answer filed by said Hunt Brothers Company, and at the same time, and said seven cases and said case of *Dunkley Company vs. Hunt Brothers Company*, pursuant to stipulation and upon order of the Court, were tried together and at the same time. Similar decrees were entered in each and at the same time, and simi-

lar proceedings were had and taken, and orders made on appeal and in connection with said application to the Supreme Court, as in said case of *Dunkley Company vs. Hunt Brothers Company*, as hereinbefore alleged, and at the same time, and on said appeal and on said application to the Supreme Court, but a single record was presented and used in all of said cases.

(i) The record on appeal to this Court, in said case of *Dunkley Company vs. Hunt Brothers Company* and the other seven cases referred to, is in the records of this Court and is designated No. 2915, "*Central California Canneries Company, a Corporation, Griffin & Skelley Company, J. C. Ainsley Packing Company, Anderson-Barngrover Manufacturing Company, Golden Gate Packing Company, J. F. Pyle & Son, Incorporated, Hunt Brothers Company, Sunlit Fruit Company, a Corporation, Appellants, vs. Dunkley Company, a Corporation, Appellee.*" Said record discloses the proceedings had and taken in said cases, together with the evidence and proofs adduced by the respective parties thereto, and reference is hereby made thereto for a more complete statement of the proceedings had and proofs taken in the said case of *Dunkley Company vs. Hunt Brothers Company* and the other said cases hereinbefore referred to, and the same is made a part hereof to the same effect as if said record was herein set forth at length.

(j) No accounting pursuant to said interlocutory judgment and decree of the District Court in said case of *Dunkley Company vs. Hunt Brothers Company* or in the other said cases herein referred to,

has been had or taken, and said interlocutory decree stands unmodified except as it may have been affected by the order of said District Court of August 22, 1921, and referred to in subdivision (L) of paragraph II hereof.

II. *Further proceedings in said cause:*

(a) On December 21, 1915, Dunkley Company filed in the District Court of the United States for the Southern District of California, Southern Division, its bill of complaint against Pasadena Canning Company for infringement of said patent No. 1,104,175. Thereafter said defendant in said case filed its answer which was substantially similar to the answer of Hunt Brothers Company as alleged in subdivision (b) of paragraph I hereof, setting up, however, certain defenses not pled in said answer of Hunt Brothers Company. In January, 1918, said case was set for trial on May 1, 1918. Defendant therein prepared diligently for trial, and arranged to have present at said trial a large number of witnesses who would testify as to the dates of the conception and reduction to practice of the alleged invention embodied in said letters patent.

(b) Thereafter and on March 18, 1918, plaintiff in said action moved to dismiss said suit without prejudice to the right of plaintiff to commence a new suit for the same cause of action, which said motion was resisted by the defendant and was, on March 25, 1918, after having been argued by the respective parties, submitted.

(c) Thereafter, to wit, on April 15, 1918, and while said motion was still under submission and un-

decided, said plaintiff petitioned the Court for leave to dismiss said suit without prejudice, upon the ground that the name of the plaintiff, on January 12, 1916, had been changed to Michigan Canning & Machinery Company, and that at or about the same time a new corporation had been formed under the laws of the State of Michigan, entitled Dunkley Company, and that on or about July 25, 1916, the said Michigan Canning & Machinery Company, formerly known as Dunkley Company and the plaintiff in said case, had sold and assigned the patent in suit to the new Dunkley Company, and that the said Michigan Canning & Machinery Company, plaintiff in said suit, no longer had any interest in the case and the patent in suit. This motion was regularly argued by the respective parties and taken under advisement. Subsequently said motion, as well as the preceding motion to dismiss, hereinbefore referred to, was denied.

(d) This last-mentioned motion, with the affidavits upon which based, gave to the petitioner the first intimation or knowledge that the plaintiff in said case of *Dunkley Company vs. Hunt Brothers Company*, had parted with its interest in said patent and rights arising thereunder.

(e) Thereupon and on May 6, 1918, the petitioner and the several defendants in said other cases in the District Court of the United States in and for the Northern District of California, Southern Division, Second Division, moved this Court for an order and decree vacating and setting aside the orders and decrees theretofore made and entered

affirming the said interlocutory decrees in said cases in said District Court at San Francisco, and for an order and decree reversing, vacating and setting aside said interlocutory decrees, on the ground that each of said causes had abated at the time of such sale, assignment and transfer of patent, and that all proceedings had and taken subsequent to such sale, assignment and transfer were nugatory.

(f) Thereafter this Court denied said motion, but directed that the mandate issue without prejudice to the right of the plaintiff-appellee to apply to the District Court for leave to make the Dunkley Company or such other corporation or persons as plaintiff-appellee might contend was or were proper or necessary party plaintiffs parties to the said actions.

(g) The proceedings hereinbefore in this paragraph set forth, and papers and records upon which based, are more fully stated in the record on appeal in the case of *Dunkley Company and Michigan Canning & Machinery Company*, Plaintiffs-Appellants, vs. *Pasadena Canning Company and George E. Grier*, Defendants-Appellees, Equity No. 3316, in the records of this Court, and particularly in volume one thereof, and in the record in this Court of *Central California Canneries et al.*, Appellants, vs. *Dunkley Company*, Appellee, No. 2915, and particularly in the record of said motion and proceedings thereon, to which said records reference is hereby made, and the same are made a part hereof, to the same effect as if each of said records was herein set forth at length.

(h) On or about the —— day of August, 1918, the Dunkley Company, plaintiff in said case of *Dunkley Company vs. Hunt Brothers Company*, and plaintiff in said seven other cases in the United States District Court at San Francisco, gave notice that on August 19, 1918, it would move said District Court for an order making said new Dunkley Company a party plaintiff in said several cases, and the said new Dunkley Company, as a part of said notice, gave notice that it would move for an order substituting it as such party plaintiff.

(i) Thereafter Hunt Brothers Company and the other defendants in said cases in said District Court gave notice that they would move the said Court to request this Court for permission to reopen said cases and to receive newly discovered and additional and further evidence bearing on the validity of said letters patent 1,104,175.

(j) Such proceedings were had and taken as that both said motions were duly made and they came on for hearing before the District Court on February ——, 1919. At the suggestion of the Judge of said District Court, further hearing of said motions was continued until after the decision of this Court on the appeal of the Michigan Canning & Machinery Company and the Dunkley Company from the decree of the District Court of the Southern District of California, Southern Division, in said case against the Pasadena Canning Company, holding said letters patent to be invalid, and dismissing said bill, which said appeal was then pending in this Court.

(k) Thereafter said appeal having been determined, and the judgment of the District Court having been affirmed, said motions were, on August 9 and 10, 1920, brought on for hearing and were argued by the respective parties. The petitioner and the other defendants in said cases urged the District Court that all proceedings had and taken on said several cases were nugatory by reason of the fact that the plaintiff therein divested itself of all interest in the subject matter of said cases long prior to the trial of said cases, and prior to the entry of the interlocutory decrees therein, and that said interlocutory decree should be vacated, and that no order should be made admitting the new Dunkley Company as a party plaintiff in said cases, without the same being opened for the reception of new and additional evidence.

(l) Thereafter and about the 22d day of August, 1921, the District Court denied the motion of petitioner and the other defendants in said cases, and granted the motion of the plaintiff in said cases to add the said new Dunkley Company as a party plaintiff therein.

(m) The proceedings had and taken on said motions referred to in subdivisions (h) and (i) of this paragraph, and the grounds thereof, the papers upon which based, and the order of the said Court on said motions all appear more fully in the record on appeal taken by the petitioner and the defendants in said other cases, from said order granting said motion of the plaintiff, to this Court, to which said record reference is hereby made, and the same is

made a part hereof, with the same effect as if said record was herein set forth at length.

III. *Essential features of course sought to be reviewed:*

(a) The date of the application by S. J. Dunkley for the letters patent held to be valid and infringed in said cases referred to in paragraph I hereof, was November 29, 1904. In the trial of said cases in the said District Court at San Francisco, the plaintiff therein made out its *prima facie* case by adducing certain proofs as to the character of the machines used by the defendants. Thereupon the defendants in said cases adduced evidence, both oral and documentary, and proved, among other things, that (References are to the record on appeal in said cases, herein usually designated S. F. Rec.):

G. E. Grier, about August, 1902, conceived the idea of the machine which he subsequently constructed (and which admittedly was an infringing device, if the letters patent in question were valid), and at the time disclosed his conception to others (S. F. Rec. 304-5, 330-3, 363-6, 351).

In April, 1903, Grier employed W. H. Finley to construct for him two machines of commercial size (S. F. Rec. 237-9, 245, 253, 258, 305-6). These two machines were completed in July, 1903 (S. F. Rec. 309-11, 319, 358, 382-3, 239-40, 256, 296-7).

One of these machines was installed in the Pasadena Canning Company's plant at Pasadena, and the other, on or about August 1, 1903, was sold to the Eastside Canning Company of Los Angeles and

immediately installed in its plant there (S. F. Rec. 309-10 and *supra*).

Each of these machines was used commercially in these two plants during the entire 1903 season, and continuously for more than ten years thereafter, and each was a complete and unqualified commercial success (S. F. Rec. 315, 318, 380).

Said dates of the Grier invention were not questioned by the said District Court nor by this Court on appeal, but were accepted as correct in each.

(b) The plaintiff in said cases thereupon, because of the rule established in such cases as *Twentieth Century Mach. Co. vs. Loew* (C. C. A., Sixth Circuit), 243 Fed. 373, 381-2; *Clark Thread Co. vs. Williamantic Linen Co.*, 140 U. S. 481, 489; *Thayer vs. Hart*, 20 Fed. 63; *Wheaton vs. Kendall*, 85 Fed. 666, 672; *D. T. Register Co. vs. Bundy Co.*, (C. C. A. Second Circuit), 178 Fed. 812, 818; *Michigan Central R. Co. vs. Cons. Car. Heating Co.*, (C. C. A., Sixth Circuit), 67 Fed. 121, 129; *Columbia Chain Co. vs. Standard Chain Co.* (C. C. A., Sixth Circuit), 148 Fed. 622, 629; *New England Motor Co. vs. B. F. Sturtevant Co.* (C. C. A., Second Circuit), 150 Fed. 131, 137; *Charles Hunnicutt vs. Gaston Co.* (C. C. A. Third Circuit), 218 Fed. 176; *Cons. Ry. etc. Co. vs. Adams & Westlake Co.* (C. C. A. Seventh Circuit), 161 Fed. 343, 350, assumed the burden of carryback the date of the alleged invention by Dunkley to a point anterior to the date of the application for said letters patent and also the date of the said invention by Grier. Three witnesses were presented for this purpose, to wit, S. J. Dunkley, the alleged in-

ventor, and Melville E. Dunkley, his son, each being executive officers of said plaintiff, and Harvey C. Schau, who for many years had been an employee of the Dunkley Company. The essential and outstanding features of the testimony adduced to this end were as follows (references are to the record on appeal in said cases):

1. S. J. Dunkley, in August, 1902, conceived the idea of a peach peeling machine, and explained it to his son Melville Dunkley and gave him instructions as to how it should be built (S. F. Rec. 415-6, 479).

2. A model or experimental machine was built during the fall of 1902, at South Haven, and there tried out on late peaches (S. F. Rec. 434-5, 416, 510, 418, 483, 495). The framework of this machine was introduced in evidence as Plaintiff's Exhibit 10.

3. A lye tank for this machine was made by the Clark Engine & Boiler Company of Kalamazoo, and delivered in April, 1903 (S. F. Rec. 418, 438). The complete machine, consisting of a brush machine (Ex. 10) and the lye tank attached, was set up at South Haven and tried out on early Georgia peaches in July, 1903 (S. F. Rec. 418, 479-70, 510-1).

4. In the late summer or early fall of 1903, a second machine was built, to wit, a three-line, wooden frame commercial machine (S. F. Rec. 488, 446). (The model machine was a one-line, wooden frame machine.) This three-line commercial machine was completed either in July, 1903 (S. F. Rec. 482-3), or August or September, 1903 (S. F. Rec.

446). This machine also was built at South Haven (S. F. Rec. 446).

5. This second machine was used on an extensive commercial scale in peeling peaches at South Haven in 1903, and on some days, the receipt of peaches was so heavy that both machines, to wit, the model or experimental machine and the three-line machine, were used (S. F. Rec. 488). 75% of the peaches peeled at South Haven in 1903 was peeled by these machines (S. F. Rec. 425).

6. Only two machines, namely, the wooden frame, experimental or model machine, and the three-line, wooden frame, commercial machine, were built prior to November 1, 1904 (S. F. Rec. 449, 500-1). Following these wooden frame machines, iron frame machines were built, as it was found that the lye destroyed the wooden framework (S. F. Rec. 417).

7. Testimony given by S. J. Dunkley and Melville E. Dunkley in 1910 in an interference proceeding, to the effect that the said model or experimental machine (Ex. 10) was built in July, 1903, was explained away by Melville E. Dunkley in this way: The only record in the possession of the plaintiff (S. F. Rec. 444-5) was a letter from the Clark Engine & Boiler Co. dated April 21, 1903 (S. F. Rec. 741), referring to an invoice for a galvanized tank. The tank referred to in the invoice was the tank for the first experimental machine (S. C. Rec. 467). This Clark letter referring to this invoice for the tank enabled Melville E. Dunkley to remember and say that the experimental or model machine was built in 1902 instead of in July, 1903, as testified to

in 1910 in the interference proceeding (S. F. Rec. 465, 463-8).

8. This so-called Clark letter was the only documentary evidence that plaintiff was able to produce. All records of the Dunkley Company which were not lost or destroyed in connection with the bankruptcy of the Company in 1908, were at South Haven and were destroyed when the cannery there was burned in 1912 (S. F. Rec. 444-5).

The importance and materiality of this fact and of the said Clark letter were pressed before this Court by counsel for the plaintiff in the following language:

“Since then they have unearthed the Clark letter of April 21, 1903, showing that the lye tank was built in April, 1903, and this letter refreshed their recollection of the transaction so as to enable them to now state that the framework and spray part of the machine had been built before the lye tank, and in following the matter back they now recollect that the framework and spray part were built in 1902. Until this Clark letter was unearthed, the Dunkleys were not sure in their recollection that the framework was built in 1902, although they were sure that it was in existence as early as July, 1903; therefore in the Patent Office proceedings they were justified in fixing the date at least as early as July, 1903. But the Clark letter changed the situation somewhat and proved to them that the lye tank was built in April, 1903, and as the spray part was built and tested with-

out the lye tank, it necessarily was built before April, 1903. In other words, the production of the Clark letter enabled the Dunkleys to remember that the spray part of the machine was built in 1902, and that a complete machine was installed with a lye tank added in July, 1903.” (Reply Brief of Appellee on appeal, S. F. case, pp. 55-6.)

And further:

“Another criticism made against the Dunkleys is that they produced no written records. But counsel seem to have overlooked the testimony given by M. E. Dunkley at page 445 of the record, to the effect that in 1912 the Dunkley cannery was destroyed by fire and their records were lost.” (Reply Brief of Appellee on appeal, p. 59.)

9. In 1903 very little hand peeling of peaches was done at South Haven (S. F. Rec. 425-6). What was done was by women sitting about small tables just as in 1902 (S. F. Rec. 425-6). There were ten or fifteen or twenty of them (S. F. Rec. 426). There was no long-hand peeling table, along each side of which women sat peeling peaches in 1903. This table was an inspection table and was not installed until 1904 (S. F. Rec. 443, 452, 454).

(c) The defendants in said cases in surrebuttal, offered three witnesses as to the said dates of the Dunkley conception and reduction to practice, to wit, Stewart Campbell, William Brunker and E. B. Mapes. Campbell testified to the building of the model or experimental machine in the fall of 1903 at

South Haven, and the three-line commercial machine in the winter of 1903-4 at Kalamazoo. His testimony, however, was rejected both in the District Court and upon appeal in this Court. Mapes, who ran a small machine shop in South Haven, produced his original account book which was introduced in evidence and which contained the following entries:

1903 Dunkley Canning Factory (Page 77)

Sept. 28,	To 2 iron pulleys for peach washer...	2.00
28,	6 hours' time on peach machine.....	2.40
29,	6 hours' time on peach machine.....	2.40
	2 lbs. babbit40
30,	6½ hours' time on peach machine.....	2.60
Oct. 1,	11½ hours' time 2 ⅜ set screws.....	.70
	1, Bore, 2 Pulleys60
	3, Cutting Shafting, 1 hour40
	5, 3 hours' time	1.20

Dunkley Canning Co. (Page 87)

Oct. 6,	Mapes time on friction 8 hours.....	3.20
	Leather for friction.....	1.00

He testified that he saw a machine in the Dunkley factory in October, 1903, but did not identify any particular machine.

Brunker (who worked at the Dunkley South Haven cannery in 1903 only, commencing work there the latter part of June and continuing for four or five months, and leaving by the last boat for Chicago) testified to helping Campbell work on a peach machine, but did not identify any particular machine. The entries in the account-book of Mapes and his testimony in explanation thereof and that of Brunker were apparently considered referable

to some machine other than the model or experimental machine and hence as not being inconsistent with the testimony of the two Dunkleys.

IV. *Newly discovered evidence.*

During the course of the trial of said case of *Michigan Canning & Machinery Co. and Dunkley Company vs. Pasadena Canning Co. et al.*, in the United States District Court for the Southern District of California, Southern Division, herein sometimes designated District Court at Los Angeles, which trial commenced on May 21, 1918, and continued until July 2, 1918, there came to the knowledge of your petitioner, and your petitioner discovered, new and additional evidence bearing upon the dates of the said Dunkley conception and reduction to practice, of an irrefutable character, which could not by the exercise of due or any possible diligence have been discovered or secured prior thereto, which said evidence and its materiality is as follows:

(a) In the trial of said case, and before the witnesses were offered on behalf of the defendants therein, Melville E. Dunkley was further cross-examined by the defendants therein as to the testimony given by him in said cases tried in the District Court of the United States for the Northern District of California, Southern Division, Second Division (herein sometimes designated District Court at San Francisco), and particularly in regard to his said testimony in respect to the so-called Clark letter and invoice referred to therein, being the matter referred to in subdivision 7 under sub-

division (b) of paragraph III hereof. Referring to said invoice, he testified as follows (References are to the record on appeal in said case tried in the District Court at Los Angeles):

"I am not just sure on the details of that tank, and I am not just sure of that invoice.

"Q. Oh, you are not?

"A. No, sir. That invoice brought the proposition up as to the general details just about the time that tank was purchased and I am quite sure that that covered the tank. It might, however, have covered other items.

"Q. And it might have been something else entirely than that tank, might it?

"A. Oh, it might have; yes, sir." (L. A. Rec. 1058.)"

Again:

"Q. You still think that this galvanized tank, as it is described in that invoice you were just looking at, is the tank that was the lye tank used at the South Haven factory?

"A. I am not sure that is the galvanized tank." (L. A. Rec. 1291.)

(Subsequently in the course of said trial and by testimony to which reference will hereinafter be made, it was definitely proven by witnesses offered by defendants, that said invoice covered not a lye tank, but a soup tank built for the Dunkley Co. and was installed, not at South Haven, but at its Kalamazoo factory. Counsel for plaintiff in said case abandoned all claim that said letter and the

invoice referred to therein covered or referred to said lye tank.)

The materiality and importance of this testimony lies in the fact that it eliminates the only documentary proof or evidence adduced in said cases in the United States District Court at San Francisco, bearing upon the date of the construction of said model or experimental machine, as testified to by witnesses offered by plaintiff therein, and also because it eliminates the excuse or explanation there made by Melville E. Dunkley for changing his testimony given in said Interference case as to the date of the construction of said model or experimental machine from July, 1903, to the fall of 1902.

(b) In the trial of said case, before witnesses were offered on behalf of defendants therein, Melville E. Dunkley was further cross-examined by the defendants therein, as to testimony given by him in said cases in the said District Court at San Francisco, and particularly in regard to his said testimony in respect to the loss and destruction of the books and records of the Dunkley Company, being the matter referred to in subdivision 8 under subdivision (b) of paragraph III hereof. After the following testimony given by the witness at the said trial at San Francisco was read to him,

“Q. Have you no records whatever showing the purchase of any parts for this first experimental model machine or the first commercial machine?

“A. The only record we have at the present time on this first machine covers the purchase of the first simple experimental tank that was built, that was used with this in 1903; otherwise we have practically no records left. What few records were left were at South Haven covering the transactions of the factory work at South Haven, and were burned when we had a complete fire loss in 1912.” (S. F. Rec. 445; L. A Rec. 1399.)

he was asked and testified as follows:

“Q. Do you recall giving that testimony?”

“A. Yes, sir.

* * * * *

“Q. Did you mean by this testimony to say that any part of the books or records containing any record evidence relating to the model experimental tank, or the building of it, had been burned or destroyed in the fire of 1912?”

* * * * *

“A. I think I testified the other day that the South Haven factory stood months idle from the bankruptcy, until the time of the fire. Whatever records were in the South Haven factory at that time, so far as I knew, were either destroyed by fire or carried away by hand. The balance of the records I have no idea where they went to.

“Q. Do you say that there was any book or any record in the South Haven factory at the time of the fire, which contained any written evidence whatsoever relating to the making of

the model experimental machine, or relating to the making of the first commercial machine?

* * * * *

“A. I think that last answer will cover that also.

* * * * *

“Q. I think I will have to ask you to say yes or no. I am not asking what is in them now. I ask you if you mean to say that you know that there was in that factory at the time it was burned any book or record that contained any evidence relating to the time of building, or the material that went into the experimental model machine, or the first commercial machine.

* * * * *

“The COURT.—I would like to have that testimony explained, what he meant in the San Francisco case. The objection will be overruled.

* * * * *

“A. Why, I wasn't there when that fire started. I don't see how I could be expected to say that I knew anything was in there. I hadn't been around there for a couple of years previous to that fire.

“Q. Then you didn't mean to say that you knew there was any book or record in there in the San Francisco trial?

* * * * *

“A. No, sir; I don't think I did so say.

“Q. At any rate, if you did say so, you didn’t mean to say that you did?

“A. No, sir.” (L. A. Rec. 1399–1402.)

There was also offered in evidence during the trial of said case, a stipulation as follows:

“It is hereby stipulated by the plaintiff that all books, papers and records of the Dunkley Company, which was an Illinois corporation operating at South Haven and Kalamazoo, Michigan, covering the period from 1901 to 1908 were turned over to H. C. Briggs as referee in bankruptcy when such corporation was adjudged a bankrupt in 1908, and were, by the said Briggs, turned over to James Grant as trustee for creditors in said bankruptcy proceedings, and thereafter, to wit, in January, 1910, by the said Grant turned over to the Dunkley Company, a Michigan corporation, the plaintiff herein.” (L. A. Rec. 1206.)

S. J. Dunkley, on being cross-examined in said case and upon the same subject matter, testified as follows:

“Q. Do you mean to say you destroyed the books of 1903?

“A. No, sir.

* * * * *

“Q. Do you mean to say you destroyed the books of 1904?

“A. No, sir.

“Q. Do you mean to say you destroyed the books of 1905?

“A. No, sir.” (L. A. Rec. 1557–8.)

The materiality and importance of this evidence and testimony lies in the fact that it eliminates the excuse and explanation made by the plaintiff in said cases in the said District Court at San Francisco, for the nonproduction of the books, papers and records of the Dunkley Company showing the purchase of lye for the lye machine and of parts for the said lye machine, and for relying upon the unsupported and uncorroborated memory testimony of the two Dunkleys and a former employee, to carry back the date of the construction of the first Dunkley machine to a point anterior to the date testified to by the two Dunkleys in said Interference proceeding, and a date anterior to the date on which Grier constructed his two commercial machines.

(c) In the trial of said case, before witnesses were offered on behalf of defendants therein, Melville E. Dunkley was further cross-examined by the defendants therein as to testimony given by him in said cases in said District Court at San Francisco, and particularly in regard to his said testimony that there was no long-hand peeling table, along each side of which women sat peeling peaches by hand in 1903, being the matter referred to in subdivision 9 under subdivision (b) in paragraph III hereof, and he testified as follows:

“Q. When you testified in San Francisco, did you not mean to have the court understand there that there was no long table installed in the factory in 1903—

“The COURT.—Now stop there.

“Q. I wanted to add, at which women pitted and peeled peaches while sitting on a platform.

“A. I don’t think I meant to infer that at all, but my mind was upon the machine which was—or the inspection table and the filling table, which was there in 1904. (L. A. Rec. 1274.)

* * * * *

“Q. Your construction of that is that you did not mean to say that there was no such table there in 1903. Is that correct?

“A. I think that is more or less correct. At the time that I was testifying here I had in mind the table that was used in connection with the peach pitters in 1904. (L. A. Rec. 1251.)

* * * * *

“Q. Was it continued to be as long in 1904 as it was in 1903?

“A. No, it was not.

“Q. What was done to it? Had it been cut in half?

“A. Both parts of that table were cut in half in 1904, both the part with the conveyor belt in the middle and the slat filling part was cut in two, with an idea of installing two lines with the peelers.” (L. A. Rec. 1073.)

* * * * *

“Q. Now in this peach season of 1903; was that table full of women from one end to the other, on both sides, peeling peaches and pitting them by hand?

“A. I should say yes, sir. I don’t remember

that it was not; that is what it was put in there for. I don't doubt but what it was."
(L. A. Rec. 1072.)

S. J. Dunkley, being cross-examined in said case and upon the same subject matter, testified as follows:

"Q. So you don't think the syringing table was in line with the long table—the 150-foot table?

"A. No.

"Q. Was the filling table in line with it?

"A. I don't remember. Having a pear cooker—

"Q. Well, without taking into consideration the pear cooker, now, was the filling table in line with the long table in 1903—the 150-foot table?

"A. Yes, I think it was.

"Q. How long was the filling table in 1903?

"A. Sixty feet.

"Q. Then the long table that had a conveyor belt over it in the peach season of 1903 was 150 feet long?

"A. As nearly as I can remember.

"Q. And it had a platform on each side of it that was about how wide?

"A. It was wide enough for the women to get up and sit, with a basket of peaches sitting next to them.

"Q. So that the chair could set on it ?

"A. Yes.

"Q. And how wide was that long table?

“A. Well, I should say the conveyor belt was 10 or 12 inches, and the pan would be 16 to—or the place where they set the pans down would be 16 to 18 on each side of the conveyor to set a chair on and hold the basket of peaches.” (L. A. Rec. 1519–20.)

He further testified that his memory as to the long table was refreshed by reading the deposition of one Miller taken in said case in which Miller exhibited his books showing he had sold 300 feet of tin to the Dunkley Company in July or August, 1903 (L. A. Rec. 1448–9). This was used to make a trough on each side of the long table. He further testified that the main factory-room was 32 feet wide (L. A. Rec. 1518–9) and 220 feet long (L. A. Rec. 1503), and that the long table and the filler table in 1903 were located along the south side of the room (L. A. Rec. 1531).

(Subsequently in the course of said trial, and by testimony to which reference will hereinafter be made, the exact date and circumstances of the construction of this long table and its use during 1903, and that substantially all peaches in 1903 were peeled by hand or by little hand machines by women sitting along this table, and that there was no commercial use of a lye peach peeling machine in 1903 were definitely proven by testimony, both oral and documentary, offered by defendants.)

The materiality and importance of this Dunkley testimony lies in the fact that, to use the language of Judge Trippet in deciding the said case before him,

“The construction of this table, and the existence thereof, in the peach season of 1903, is utterly inconsistent with the theory of the plaintiffs’ case,”

in that the construction of this long table just prior to the opening of the peach season of 1903 and at or about the time at which it was testified that the three-line commercial machine was being built, and the use of this long table during the 1903 season, involving as it did the installation and use of a new and improved system, is repugnant to the idea that at the same time lye peeling machines were being constructed and were installed in the very same room and put into extensive commercial use, and that 75% of the peaches in that season were peeled by these machines and that the only hand peeling done was by women sitting about small tables just as in 1902 and that there were but ten or fifteen or twenty of these women.

(d) In the trial of said case, toward the close thereof and when S. J. Dunkley was being examined as a witness on behalf of the plaintiffs therein, he produced, for the purpose of refreshing his recollection, certain correspondence which had passed between himself and Mr. Edwin Norton and Mr. O. W. Norton, who were the financial backers of the Dunkley Company (L. A. Rec. 4063). The letters embraced in this correspondence, he there testified, were “dug up out of the cellar” (L. A. Rec. 4182) by a Mr. Verhage (who was an employee of the Dunkley Co.). The particular letters produced, according to the testimony of the said Dunk-

ley there given, were taken "from stacks of them" including everything "from 1901 on" (L. A. Rec. 4076). All of the letters embraced in this correspondence were by the defendants therein promptly introduced in evidence (L. A. Rec. 4099). They appear copied at length in the record on appeal to this Court in said case, which record is in the files of this Court, and to which record reference is hereby made for a complete transcript of said letters, and the same is made a part hereof to the same effect as if herein set out at length.

The materiality and importance of this correspondence lies in the fact that it established:

1. That the second machine built, to wit, the three-line, wooden-frame, commercial machine, was built, not at South Haven, but at Kalamazoo, and was built after the closing up of the cannery at South Haven, which closing was at least as early as October 29, 1903, and was shipped to South Haven in March or early in April, 1904, and was thereupon set up in the South Haven factory and was used for the first time during the peach season of 1904.

2. That there was no use made of a lye peeling machine on a commercial scale during the 1903 season.

3. That in the 1904 peach season, the use of a lye peeling machine was considered as something new and experimental.

4. That the original entries in the account-book of E. B. Mapes, hereinbefore referred to, and which showed work on a peach washer or peach machine

in September and early in October, 1903, and his testimony in respect thereto and the said testimony of Brunker must have had reference to work on the model or experimental machine, as the three-line commercial machine was not built at South Haven and had not been started at the date of these entries or during the time Brunker was at South Haven, and as the model or experimental machine was the only other machine there was to which said entries and testimony could have referred.

(e) Subsequent to the trial and determination of said case in said United States District Court at Los Angeles, there was tried in the United States District Court for the Southern District of New York, a case between the Dunkley Company, the respondent herein, and the California Packing Corporation, involving, among other issues, the issue of priority as between the alleged Dunkley invention and the said invention of Grier, and in which case all the evidence presented at the trial in said District Court at San Francisco, and all the evidence presented in the case tried in the said District Court at Los Angeles was presented, during the course of which said trial your petitioner discovered certain new and additional evidence which could not, by the exercise of due or any possible diligence, have been discovered or secured prior to June, 1918, in this, that certain additional evidence was there presented by said Dunkley Company, included in which were the payrolls of the Dunkley Company for its South Haven cannery for the seasons of 1902, 1903 and 1904. Said payrolls show

the relative number of piece workers and time workers in the respective years to have been as follows, to wit:

	1902	1903	1904
Piece Workers (hand peelers)....	70	80	12
Time Workers	121	75	216

Said payrolls and the evidence identifying and explaining the same are a part of the record on appeal taken by the petitioner and the other defendants in said cases tried in the said District Court at San Francisco, from the order granting the motion of the plaintiff therein, and referred to more particularly in paragraph II hereof, to which said record reference is hereby made.

The materiality and importance of this testimony lies in the fact that it is inconsistent with the said testimony offered on behalf of the plaintiff in said cases tried in said District Court at San Francisco, to the effect that 75% of the 1903 pack was peeled by lye machine, and that there were but ten or fifteen or twenty women peeling peaches by hand in 1903, since if this testimony had been correct, the drop in the number of piece workers would have occurred in 1903 instead of in 1904.

(f) Subsequent to the trial and determination of said case in the United States District Court at Los Angeles, your petitioner discovered a file of the issues of the "Weekly Tribune-Messenger" of South Haven, for the year 1904, which said paper was a weekly edition of the "South Haven Daily Tribune." (The circumstances of the discovery of this file and that it could not have been earlier dis-

covered by due or any diligence are more particularly referred to hereinafter.) In said "Weekly Tribune-Messenger" of April 22, 1904, there appeared the following article:

"IMPROVEMENTS TO CANNING FACTORY.

(From Tuesday's Daily.)

"The Dunkley Company is making extensive improvements at the canning factory in preparations for this season's business. A low shed 16 feet wide is being built along the south side next the railroad, nearly 200 feet long, to be used for storing empty cases. A similar shed, not quite as long, will be built along the north side for a cold-storage room, and a new boiler room will be built at the west.

"Inside important changes are being made in the machinery, which is under the direction of Stewart Campbell, the superintendent, who is inventor of two new machines to be used for the first time this season: a pitting machine and a paring machine. Two of each will be put in, as they are building an additional paring table 110 feet long. Mr. Campbell has also about perfected a sorting machine which is said to be more wonderful even than the pitting machine.

"Also another vacuum canning machine will be installed so that the capacity of the factory will be very materially increased. The company will be prepared this year to handle a larger quantity of fruit than ever before."

No denial or correction of this article appears in any subsequent issue of said paper. The article was written by L. L. Crosthwaite, now and for some

time hitherto a resident of Chicago, Ill., whose best recollection is that the information upon which the article was based was given to him by S. J. Dunkley, all of which more fully appears from the affidavits of said L. L. Crosthwaite in the record on appeal taken by the petitioner and the other defendants in said cases in the said District Court at San Francisco, from the order granting the motion of the plaintiff therein, and referred to more particularly in paragraph II hereof, to which said record, and particularly the portion thereof containing the affidavits of said L. L. Crosthwaite, reference is hereby made to the same effect as if said affidavits were herein set out at length.

The materiality and importance of this evidence and testimony lies in the fact that it establishes that the use of a lye peeling machine at the Dunkley factory at South Haven was new in the year 1904, and that there had not been any commercial use of a lye peeling machine at said factory during the 1903 season.

(g) Subsequent to the trial and determination of said case in the United States District Court at Los Angeles, and in or about the month of December, 1918, your petitioner discovered that Mr. Arthur W. Norton, of Baltimore, Md., now Vice-president of the Continental Can Co., the son of Edwin Norton, deceased, who was a stockholder in and the financial backer of the old Dunkley Company, and being the "Arthur" referred to in that certain letter of October 23, 1903, from Edwin Norton to S. J. Dunkley, one of the letters embraced in

the correspondence referred to in subdivision (d) of this paragraph, and who was at the South Haven factory of the Dunkley Company during the 1903 and 1904 peach seasons as the representative of his father, by reason and as a result of reading said correspondence referred to in said subdivision (d) of this paragraph, was enabled to remember the facts to be and to testify that the peeling machine referred to in said letter of October 23, 1903, was a model or experimental machine which was built at South Haven during the fall of 1903 and tried out on a few late peaches that year, and that there was no commercial lye peeling of peaches during the 1903 season, and that during the winter of 1903-4 there was constructed a second machine, to wit, a three-line, wooden-frame, commercial machine, and that this machine was installed in the factory at South Haven before the opening of the 1904 season and was used extensively during the 1904 season, and that this was the first time there was any commercial use of the lye-peeling machine at the South Haven factory of the Dunkley Company. The affidavits of said Arthur W. Norton to these and other facts appear in the record on appeal taken by petitioner and the other defendants in said cases in the United States District Court at San Francisco, from the order granting the motion of the plaintiff therein, and referred to more particularly in paragraph II hereof, to which said record and particularly the portions thereof containing the affidavits of said Arthur W. Norton, reference is hereby made and the same is made a part hereof, to the

same effect as if said affidavits were herein set out at length.

The materiality and importance of this evidence lies in the fact that it establishes the date of the construction of the Dunkley model machine to have been the autumn of 1903, the date of the construction of the three-line, commercial machine to have been the winter of 1903-4, and that there was no commercial use of a lye peeling machine until 1904.

(h) Said testimony of S. J. Dunkley and Melville E. Dunkley, as set forth in subdivisions (a), (b) and (c) of this paragraph, and of said S. J. Dunkley in regard to said Dunkley-Norton correspondence, as set forth in subdivision (d) hereof, is but a part of the testimony of said witnesses given in said case tried at Los Angeles. The full testimony of said witnesses there appears in the record of said case on appeal in this Court, to which said record reference is made for said testimony so specifically referred to, as well as to all of the testimony of said witnesses in said case, to the same effect as if all of said testimony of said witnesses was here set forth at length.

(i) Melville E. Dunkley and S. J. Dunkley are now, and at all times since long prior to 1916, have been directors and executive officers of said Michigan Canning & Machinery Company, and are now and at all times since the organization of said new Dunkley Company, have been such officers of said new company.

V. *Circumstances of discovery of new matter—
Diligence.*

(a) Referring to the new matter set forth in subdivision (f) of paragraph IV hereof, the petitioner alleges that said newspaper article was discovered under the following circumstances:

On or about January 18, 1919, Mr. Kemper B. Campbell, one of the attorneys of petitioner, received a letter from Mr. Bert McFarland, of South Haven, Michigan, stating that he had discovered a file of the "South Haven Tribune-Messenger" for the year 1904 in which appeared the article referred to. Thereupon the said Campbell immediately wired Mr. Frank H. Smiley, of Chicago, advising him of this fact and instructing him to go at once to South Haven and investigate the same. Thereupon the said Smiley went to South Haven, but it developed that said file was not in the possession of the said McFarland, but that he had been permitted to see one in the possession of another person there. Further investigation by the said Smiley unearthed the location of said file, and he was allowed to examine the same, but not to take it from the possession of the person having the same. Thereafter such arrangements were made that the custodian of such file took the same to Chicago where the said L. L. Crosthwaite resided and where the said Crosthwaite was permitted to examine the said file.

Petitioner has never been able to ascertain from whence said file was secured by said person at South Haven. During the course of the prepara-

tion of the trial of said case of *Michigan Canning & Machinery Co. et al. vs. Pasadena Canning Co. et al.*, in the said District Court at Los Angeles, and subsequently, said Campbell caused diligent search to be made for a 1904 file of said "Tribune-Messenger" or of said "Daily Tribune," and caused inquiries to be made at the Public Libraries at South Haven and at Kalamazoo and at the State Capital of Michigan, and at the newspaper offices at South Haven, and of all persons accustomed to keep back numbers of local papers, but notwithstanding said careful search and investigation, no complete file of either of said papers, nor the issues of either of said papers in which said article referred to appeared, could be found or were at any of such places, all of which more fully appears from the affidavits of the said Campbell which appear in full in the said record on appeal to this Court from the order of said District Court at San Francisco, granting said motion of plaintiff for an addition of a party plaintiff, to which said record reference is hereby made for said affidavits and to the same effect as if said affidavits were herein set forth at length.

(b) Referring to the new matter set forth in subdivision (g) of paragraph IV, the petitioner alleges that said Arthur W. Norton was interviewed by Mr. Kemper B. Campbell in or about the month of February, 1918. At that time he stated to the said Campbell that his memory was not clear as to the dates of various occurrences at the South Haven cannery of the Dunkley Company, and that

his testimony, because of the state of his memory, would not throw any light on the controversy between the said parties to the case at Los Angeles, as to the dates of the alleged Dunkley invention. Subsequently, to wit, in or about the month of November, 1918, at Baltimore, Maryland, the attention of the said Arthur W. Norton was called by Francis J. Heney to said letters passing between S. J. Dunkley on the one side, and Edwin Norton and O. W. Norton on the other, and he was asked if he would be willing to read these letters. Thereafter he stated to the said Francis J. Heney that he had read the letters, and that as a result thereof the sequence of events occurring at South Haven had become clear to him, and that he was then able and willing to testify to certain facts which were subsequently, to wit, on December 6, 1918, and February 10, 1919, expressed in the affidavits referred to in subdivision (g) of paragraph IV hereof.

VI. *Effect of new matter.*

That the said testimony offered by the plaintiff in said cases tried in the District Court at San Francisco, when considered in connection with the subsequent substantial and vital changes in testimony by the two Dunkleys, and the facts disclosed by said Dunkley-Norton letters and said newspaper article of April 22, 1904, and the said testimony of Crosthwaite in respect thereof, and said payrolls, and said testimony of Arthur W. Norton, is "not direct and strong," but on the contrary, is "weak and uncertain," and is not of a satisfactory or convincing character, and, petitioner is advised, is

clearly insufficient, as a matter of law, to carry back the date of the alleged Dunkley invention to a point anterior to the established date of the Grier invention. Furthermore, if the rule of *falsus in uno, falsus in omnibus*, applied by this Court to the testimony of Stewart Campbell in affirming on appeal the judgment of said District Court at San Francisco, be applied in like manner to the said testimony of the two Dunkleys, the entire testimony of the two Dunkleys must be rejected, leaving no proofs to carry back the said date of the alleged Dunkley invention to a point anterior to the date of the Grier invention.

VII. *Additional new matter.*

At the trial of the said case of *Michigan Canning & Machinery Co. et al.* vs. *Pasadena Canning Co. et al.*, in said District Court at Los Angeles, there was presented by the defendants therein a large amount of additional and newly discovered evidence (in addition to the new matters set out in subdivisions (a), (b), (c) and (d) of paragraph IV hereof), bearing upon the date of the said alleged Dunkley invention, of such character, force and cogency that the Honorable Oscar A. Trippet, the trial Judge in said case, was convinced thereby "beyond a reasonable doubt" that the Dunkley model or experimental machine was built, not in the autumn of 1902, but one year later, to wit, in the autumn of 1903, and that the date of the said Dunkley patent could not be carried back beyond the summer of 1903 or to a point anterior to the date of the said Grier invention.

In all about forty witnesses, who did not testify in said trial at San Francisco, testified at the said trial at Los Angeles on the issue of the date of the alleged Dunkley invention. Nearly all of these testified in open court. Nearly every one in authority or who took any considerable part in the activities at the Dunkley factory at South Haven during 1903 and 1904, was produced by the defendant as a witness in said case. A considerable amount of documentary evidence was adduced by said defendants. These witnesses testified in the most minute detail as to what took place at said factory during the 1903 and 1904 canning seasons, so that the trial Judge was enabled to visualize the daily life at the said factory and the developments there from time to time as they occurred.

Among these witnesses were (References are to record on appeal to this Court in said case):

1. *William Treece*, now and for more than thirty-eight years a resident of South Haven (2772), who, about August 20, 1903, installed the electric lights over the long hand peeling table (2773-4) which was built in the summer of 1903, and who repaired, during the 1903 season, the little hand peeling machines used at the long table (2776, 2794), and who, in 1903, but after September, saw the model or experimental machine, and saw it being tried out in the fall of 1903 (2778-81), and who, in 1904, actually had charge of and operated the new first commercial lye peeling machine (2786).

2. *Mrs. George K. Brown* (formerly Prena de Young), now living on a farm at Wayland, Michigan and who worked at the Dunkley cannery at South Haven every year the factory ran until 1904 (she having been married on February 4, 1904) (2505, 2520), and who in 1903 was one of the *inspectresses* who inspected the fruit peeled by hand by the women at the long table (2509), and who testified that there were no peaches peeled commercially by the lye process in 1903 (2571, 2521).

3. *Mrs. Leander Kern* (formerly Verna Hallock), now and for a long time a resident of Kalamazoo, who in 1903 was one of the *inspectresses* at the Dunkley cannery in South Haven (1909) and who testified in detail as to the practical daily operations at the cannery in 1903, and that there was no commercial lye peeling of peaches during that year (1911-2, 1941-4).

4. *Mrs. Charles DePue* (formerly Dena Corby), of Kalamazoo, and who worked at the Dunkley South Haven cannery during the 1903 season and at times acted as an *inspectress* (2689-91), and who testified in detail as to the operations at the long table, and that there was no commercial lye peeling of peaches in 1903 (2696).

5. *Mrs. Nellie Weed*, 6. *Mrs. Frank Webb*. 7. *Mrs. Mary Stafford*, each an old-time resident of South Haven, and each of whom worked at the Dunkley South Haven cannery peeling peaches during the 1903 season only (2031, 2039, 1997, 2007, 2213, 2214-5), and each of whom testified there was

no commercial lye peeling of peaches during that year (2036-7, 2003-5, 2227, 2220).

8. *Bert McFarland*, now and for over thirty years a resident of South Haven (2837), and who was employed in the Dunkley cannery at South Haven in the peach peeling department in the season of 1903 (2837-8), and who in that season widened the platform on each side of the long table (2840), and who testified as to the absence of any commercial lye peeling machine during that season (2841), and who saw the model machine in course of construction in the fall of 1903 (2840-1), and who also worked at the cannery in 1904, and who saw the first commercial machine which was newly installed that year (2843).

9. *George K. Brown*, now a farmer at Wayland, Michigan, near Kalamazoo (2441), a former factory superintendent for the Dunkley Co. (2471), who was employed at the Dunkley South Haven cannery in 1903 (2447), and who saw the model machine being built about September, 1903 (2459-60, 2463-4), saw it tested out in the latter part of October, 1903 (2467), and who testified that no peaches were peeled commercially by lye during 1903 (2473); who, before going to South Haven in 1903, was employed at the Kalamazoo plant of the Dunkley Company (2447), and there saw a soup tank (2451-4, 2473) which was the tank covered by the invoice of the Clark Engine & Boiler Co., and referred to in said letter commonly referred to herein as the Clark letter; who before taking over the superintendency of the Hartford plant in 1904,

was at South Haven and saw the new, three-line, wooden-frame commercial machine being installed (2468).

10. *Martin DeLoof*, now a business man at Kalamazoo, who kept books for the Dunkley Co. in 1903, and had charge of the payrolls of the Company at the South Haven cannery (1165); who had a bedroom at the cannery just off the main room (1177), and who passed through the main room daily going between his bedroom and the office (1177), and who testified there was no commercial lye peeling of peaches during the 1903 season (1178), and that the first commercial lye peeling of peaches was in 1904 (1183 *et seq.*).

11. *Ab. Vanderbrook*, now a resident of Perrysburg, Ohio, who had charge of receiving fruit at the Dunkley South Haven cannery during the 1903 season (2739), and who testified that peaches, during that season, were peeled by hand and not by the lye process (2744), and that the use of the lye process started for the first time in the season of 1904 (2745).

12. *S. Van Nostrand*, for twenty-five years a druggist at South Haven and a resident of that town for over fifty years (2327-8), who was an old-time friend of S. J. Dunkley (2328), and who discussed with him the peeling of peaches by the lye process, and was interrogated by Dunkley regarding cylindrical brushes, and who furnished Dunkley with small quantities of lye suitable for experiments (2346-8), his books showing the sales all in the year 1903 (2340-2), and ho testified to

seeing the model machine, but without any lye tank, in the basement about October 20, 1903 (2332, 2335-6, 2352-3).

13. *George Myhan*, former Postmaster of South Haven, and a resident of that place for over fifty years (2102-3), who was a fruit buyer for the Dunkley Company, and who saw the experimental model machine in the basement of the Dunkley cannery at South Haven in the fall of 1903 (2106-8, 2133), and who testified peaches were not peeled commercially by lye during the 1903 season (2111), and that the first commercial use of the lye peeling machine was in the season of 1904 (2108, 2112).

14. *L. L. Corsthwaite*, now employed on the Chicago News, but in 1903 and 1904 connected with the "South Haven Tribune-Messenger," as a reporter (3182), and who wrote a long article for the "Tribune-Messenger" which appeared in the issue of October 1, 1903, describing in detail the progress of peaches from the orchard to the warehouse, and the methods employed in peeling and packing same at the Dunkley cannery (3182-3), and who, refreshing his memory by this article, testified positively there was no lye peeling machine being used in the factory in 1903 (3189-90).

15. *C. R. Newton*, since 1902 a resident of South Haven (2815), who was employed at the Dunkley cannery at South Haven as a syruper at the west end of the peeling room in 1903 (2817, 2816), and who testified that no peaches were peeled commercially by the lye process that year (2819-20),

but that the use of the lye process commenced in 1904, during which year he was also employed at the cannery in the same capacity (2823), and who in 1903 saw in the basement a machine that looked like the framework of the model or experimental machine (2821-2).

16. *Mrs. Eleanor Moore*, now head of the dry-goods department of Hale's Department Store at South Haven (2869), who was employed at the filling table at the end of the long peeling table at the Dunkley South Haven cannery in 1903 (2851), and who testified there were no peaches peeled by lye during 1903 (2854), but that the use of the lye process started in 1904 (2855-6).

17. *Robert Newton*, son of C. R. Newton, now a resident of Kalamazoo (2368), and who worked in various capacities in the Dunkley South Haven factory in 1903 (2371), and who testified that no peaches were peeled commercially by lye in 1903 (2377), and who saw the first experimental model machine being built in the basement of the factory in the fall of 1903 (2377-85).

18. *Mrs. Ed Kreuger*, who has lived at South Haven since 1893 (2172) and who worked at the long hand peeling table at the Dunkley South Haven cannery during the 1903 season (2175), and who testified there was no lye peeling of peaches during 1903 (2183-4), but that in 1904, during which year she also worked at the Dunkley South Haven cannery, she inspected lye peeled peaches (2186-7).

19. *George Harold*, now and for a long time a resident of South Haven and vicinity (2662), who

was employed at the Dunkley South Haven cannery in 1904 (2662), and who assisted in installing water pipes for the new three-line commercial machine which was being installed in June and July, of that year (2664-7).

20. *Mrs. George Harold*, now and for a long time a resident of South Haven and vicinity (2072), who peeled peaches at the long hand peeling table in 1903 (2076), and who part of that time acted as an *inspectress* (2077), and who was an *inspectress* practically all of the time during the 1904 season (2081-2), and who testified there was no lye peeling of peaches in 1903 (2080-1), but that the first lye peeling occurred in 1904 (2079).

21. *William H. Riddeford*, a member of the firm of Riddeford Brothers, of Chicago, now and for many years past manufacturers of brushes (1708-9), who identified Stewart Campbell as the man who purchased for the Dunkley Co. of South Haven, from Riddeford Brothers, about August, 1903 (1709), two cylindrical brushes for a machine to be constructed for peeling peaches, and who produced his original books showing the sale and containing a sketch of the brushes ordered from him (1710 *et seq.*).

22. *Nicholas Plating*, for many years a boiler-maker with the Clark Engine & Boiler Co., of Kalamazoo (2600), who made the tank for the Dunkley Co. covered by the invoice of April 20, 1903, which was the invoice referred to by the so-called Clark letter, and who testified that the invoice covered a soup tank which was installed in the Kalamazoo

factory of the Dunkley factory (2601-3, 2609), and not a lye tank, and who also made for the Dunkley Company, a boat-shaped tank which resembled the tank shown in the Dunkley patent drawings (2603, 2607-8).

23. *Louis E. Payne*, a pattern maker of Kalamazoo (3041), who made patterns for Stewart Campbell in the early part of 1904 for a peach peeler and also for a peach grader (3043).

24. *Jacob Hycoop*, of Kalamazoo (3023), who identified the Decker books showing work on a peach peeler for the Dunkley Company in the spring of 1904 (3030-1 *et seq.*), and who remembered doing work on a peach peeler for the Dunkley Co. at the instance of Stewart Campbell (3025-6).

25. *William Decker*, 26, *Dorothy Janashak*, of Kalamazoo, who also identified entries in the Decker books, showing work done on a peach peeler for the Dunkley Co. in the spring of 1904 (253 *et seq.*, 280 *et seq.*).

27. *Fred J. Buckley* and 28, *Thomas Brazill*, who identified records of the Buckley shops in Kalamazoo showing the sale during the early part of 1904 to the Dunkley Company of various castings, etc., and who stated some of these were ordered by Stewart Campbell for a peach peeler.

29. *John F. Noud*, of South Haven, President of the Noud Lumber Co., who identified account-books showing the sale of lumber to the Dunkley Company in July and August, 1903, which was the lumber used for the construction of the long hand peeling table.

30. *John C. Miller*, of South Haven, who furnished 150 feet of trough for the long table in 1903 (2645-6), and whose books show date of such sale, and whose deposition refreshed the memory of S. J. Dunkley so that in the trial of the case at Los Angeles he was able to remember about the long table in 1903 (1448-9).

31. *Robert Clark*, 32, *William Clark*, 33, *Clyde M. Funk*, 34, *Maud Howes*, and 35, *Katherine Breen*, residents of Kalamazoo, who identified books and records of the Clark Engine & Boiler Co. which established that but one lye tank was built by the Clark Company for the Dunkley Company between May, 1902, and September 30, 1904, and that this tank was delivered on January 30, 1904, and was a special tank built according to sketch; the only other tank furnished during that period being the tank covered by the invoice of April 20, 1903, referred to in the so-called Clark letter, and which was proven to be a soup tank (2660-1, 2635).

36. *Leander Kern*, who went through the South Haven factory of the Dunkley Co. in 1909, and who testified there were no books or records there (3073-4).

37. *William C. Spencer*, now and for many years a resident of South Haven, who worked for the Dunkley Co. at its South Haven cannery in 1904 (3060), and who testified that the first commercial lye machine was operating in 1904, and that S. J. Dunkley told him the machine and process were something new and that it was put in that year (3060-1), and who also testified that in 1909 he was

watchman of the Dunkley factory for an insurance company, and that there were no books and records there (3063-5).

38. *William McEwing*, of South Haven, who was an appraiser in the Dunkley Co. bankruptcy matter in 1908, and who testified that there were no books or records at the South Haven factory of said company at that time (2321-3).

39. *Charles DePue*, a resident of Kalamazoo, syrup maker at South Haven factory during season of 1902, 1903 and 1904, who first saw a lye peach peeling machine in the season of 1904 (2553).

40. *August M. Augensen*, now and for many years a mechanical engineer for the American Can Company (2137), who was at the Dunkley cannery at South Haven in 1902 (2138), and who in 1904 was there for a considerable length of time installing in the factory special lines of machinery (2149), and who saw in 1904, a new commercial lye machine being assembled and set up in the factory (2150-3, 2165), and who almost daily at luncheon participated in conversation with Melville E. Dunkley, Arthur W. Norton and others, indicating that the new peeling machine marked the first commercial use of the lye peeling system (2163).

41. *John Hetherington*, expert machinist in the employ of the Cadillac Company of Detroit, Michigan (2875), who was employed by the Dunkley Company at the South Haven cannery in 1904 and 1905 (2875), as a machinist, and who testified that a new commercial machine was installed in 1904 (2885-6), and who superintended the building of the

iron frame machines in the winter of 1904-5 (2892-5).

The full testimony of each of said witnesses referred to in this paragraph, and the documents and records referred to by them in their testimony appear in the record on appeal to this Court in said case, to which said record reference is hereby made for the testimony of said witnesses, and the said testimony of each and said documents and records are hereby referred to and made a part hereof to the same extent as if herein set forth at length. And further reference is hereby made to the affidavits subsequently made by these said several witnesses, as the same appear in said record on appeal to this Court, from said order of the District Court at San Francisco, granting the motion of the plaintiff in said cases for an addition of a party plaintiff, and the said affidavits are hereby made a part hereof to the same extent as if here set forth at length.

The materiality and importance of this evidence lies in the fact that it affirmatively establishes the date of the alleged Dunkley invention to have been subsequent to the date of the Grier invention.

VIII. *Circumstances of discovery of new matter—
Diligence.*

The circumstances of the discovery of said testimony referred to in paragraph VII hereof are stated in the affidavits which appear in the record on appeal from the said order of said District Court at San Francisco granting the motion of the plaintiff in said cases there for an addition of a party plaintiff, to which said affidavits and particularly to

the affidavit of Kemper B. Campbell and the supplemental affidavit of Kemper B. Campbell, reference is hereby made, and the same are hereby made a part hereof to the same extent as if herein set forth at length, and the reasons why said testimony was not discovered and presented at the trial of said cases in the District Court at San Francisco are stated in said affidavits specifically referred to and also in the said affidavit of William K. White appearing in said record, to which reference is hereby made.

IX. *Decisions on new matter.*

The new matter hereinbefore referred to, except that referred to in subdivisions (e), (f) and (g) of paragraph IV hereof, was before the said District Court at Los Angeles in said case of *Michigan Canning & Machinery Co. et al. vs. Pasadena Canning Co. et al.*, and said Court, after having heard said evidence and after having heard nearly all of the witnesses giving the same testify in open court, considered the same as material and of such a conclusive character as to impel the conclusion beyond a reasonable doubt that the Dunkley first experimental or model machine was not constructed in the autumn of 1902, as testified to by witnesses offered by the plaintiff in said cases tried in the District Court at San Francisco and as found by said Court, but in the autumn of 1903, and that the date of the said alleged Dunkley invention could not be carried back any further than the summer of 1903; and that hence said invention was subsequent in point of time to the invention of said Grier.

Subsequently there was tried in the United States District Court for the Southern District of New York, a case between the Dunkley Company, the respondent herein, and the California Packing Corporation, involving, among other issues, the issue of priority as between the alleged Dunkley invention and the said invention by Grier, and in which case all of the evidence presented in said cases tried in the said District Court at San Francisco and all of the evidence presented in said case tried in said District Court at Los Angeles, and certain additional evidence of a somewhat inconsequential character, except said payrolls of the said Dunkley Company (said additional evidence is set forth at length in the record on appeal to this Court from the said order of the District Court at San Francisco granting the motion of the plaintiff for an addition of a party plaintiff, to which record reference is hereby made for such additional evidence), and in which case said Court reached the same conclusion as did the said District Court at Los Angeles, as to the date of the alleged Dunkley invention.

X. Equity of the petition.

It is inequitable and unjust that the decision and decrees of said District Court at San Francisco be allowed to stand as against this petitioner and the other defendants therein, when based upon evidence adduced by the plaintiff therein, which in said subsequent cases has been retracted and changed in essential and material particulars, and when said evidence in its modified and changed form is insufficient in character to carry back the date of the

alleged Dunkley invention to a point anterior to the date of the Grier invention, and when in said subsequent cases it has been affirmatively established that the date of the alleged invention by Dunkley was subsequent to the date of the Grier invention. Petitioner also represents that in the interest of justice and uniformity of judicial decision, the decrees should not be allowed to stand as against the petitioner and said other named defendants in said cases tried in the District Court at San Francisco, when as against all of their competitors in California the patent sustained in said cases is invalid.

WHEREFORE, petitioner respectfully prays that this Honorable Court take cognizance of and examine the new matter herein referred to, and that an order be made by this Court granting the petitioner leave to file against the respondent, Dunkley Company (and the Michigan Canning & Machinery Company, if petitioner be advised that said company is a necessary or proper party plaintiff), in the United States District Court in and for the Northern District of California, Southern Division, Second Division, an original bill in the nature of a bill of review setting up the new matter referred to in this petition and seeking to have reviewed, reversed and set aside that certain interlocutory decree pronounced by said Court against said petitioner on the 8th day of December, 1916, in said case of *Dunkley Company*, Plaintiff, vs. *Hunt Brothers Company*, Defendant, being Equity Case No. 211 in

said court, and for such other relief as may be appropriate in the premises.

W. J. CARR,
FREDERICK S. LYON,
FRANCIS J. HENEY,
KEMPER CAMPBELL,

Solicitors and Counsel for Petitioner.

State of California,
County of Los Angeles,—ss.

Kemper B. Campbell, being first duly sworn on oath, deposes and says: That he is one of counsel for the petitioner in the foregoing petition; that he has read the foregoing petition, and is familiar with the contents thereof, and that the facts therein stated are true.

KEMPER B. CAMPBELL,

Subscribed and sworn to before me this 5th day of January, 1922.

[Seal] L. BELLE WEAVER,
Notary Public in and for the County of Los Angeles,
State of California.

[Endorsed]: Original. In the United States Circuit Court of Appeals for the Ninth Circuit. Hunt Brothers Company, a Corporation, Petitioner, vs. Dunkley Company, a Corporation, Respondent. Notice of Motion and Petition for Leave to File in the District Court of the United States in and for the Northern District of California, Southern Division, Second Division, an Original Bill in the Nature of a Bill of Review. Received copy of the within notice and petition this 6th day of January,

1922. Fred L. Chappell and W. A. Richardson,
Counsel for Dunkley Co. and Michigan Canning &
Mach'y. Co.

In the United States Circuit Court of Appeals for
the Ninth Circuit.

CENTRAL CALIFORNIA CANNERIES, a Cor-
poration (Sometimes Designated CENTRAL
CALIFORNIA CANNERIES COMPANY),
Petitioner,

vs.

DUNKLEY COMPANY, a Corporation,
Respondent.

Notice of Motion.

To Dunkley Company and Michigan Canning &
Machinery Company, and to Messrs. Fred L.
Chappell and W. A. Richardson, Counsel and
Solicitors for said Companies:

YOU AND EACH OF YOU ARE HEREBY
NOTIFIED that on February 6, 1922, at the hour
of 10:30 A. M., or as soon thereafter as counsel
can be heard, in the courtroom of the above-en-
titled court in the United States Post Office and
Courthouse Building in the City and County of
San Francisco, California, Central California Can-
neries (sometimes designated Central California
Canneries Company) will move the Court for an
order permitting it to file a bill in the nature of a
bill of review to have reviewed, reversed and set
aside that certain interlocutory decree made and

entered in the United States District Court for the Northern District of California, Southern Division, Second Division, on December 8, 1916, in the case of *Dunkley Company*, Plaintiff, vs. *Central California Canneries Company*, Defendant, Equity No. 201, and to that end will present the petition for such leave accompanying this notice.

Said Motion will be based upon the matters and things set forth in said petition, and on the record in the above-entitled court, of *Central California Cannery Company*, a Corporation, *Griffin & Skelley Company*, *J. C. Ainsley Packing Company*, *Anderson-Barngrover Manufacturing Company*, *Golden Gate Packing Company*, *J. F. Pyle & Son, Incorporated*, *Hunt Brothers Company*, *Sunlit Fruit Company*, a Corporation, Appellants, vs. *Dunkley Company*, a Corporation, Appellee, No. 2915, including the record on appeal to said Court from the order of said District Court granting the motion of the Dunkley Company for a substitution or addition of parties plaintiff, and upon the record in this court of *Dunkley Company and Michigan Canning & Machinery Company*, Plaintiffs-Appellants, vs. *Pasadena Canning Company and George E. Grier*, Defendants-Appellees, No. 3316.

W. J. CARR,
FREDERICK S. LYON,
FRANCIS J. HENEY,
KEMPER CAMPBELL,
Solicitors for Petitioner.

In the United States Circuit Court of Appeals for
the Ninth Circuit.

CENTRAL CALIFORNIA CANNERIES, a Cor-
poration (Sometimes Designated CENTRAL
CALIFORNIA CANNERIES COMPANY),
Petitioner,

vs.

DUNKLEY COMPANY, a Corporation,
Respondent.

**Petition for Leave to File in the District Court
of the United States in and for the Northern
District of California, Southern Division, Sec-
ond Division, an Original Bill in the Nature
of a Bill of Review.**

To the Honorable Judges of said Court:

Central California Canneries, a corporation
(sometimes designated Central California Canneries
Company), presents this its petition against Dunk-
ley Company, a corporation and respectfully shows:

I.

Petitioner hereby adopts and incorporates all of
the allegations, matters and things contained in the
petition of Hunt Brothers Company for leave to
file a bill in the nature of a bill of review, filed
concurrently herewith, to the same effect as if
herein set forth at length, substituting, however,
the name of petitioner for the name of Hunt Broth-
ers Company where the same appears in said peti-
tion, and substituting the name of Hunt Brothers

Company for the name of petitioner where the same appears (except where reference is made to the title of the record in this Court of "*Central California Canneries Company et al.*, Appellants, *vs. Dunkley Company*, Appellee, No. 2915").

WHEREFORE, petitioner respectfully prays that this Honorable Court take cognizance of and examine the new matter herein referred to, and that an order be made by this Court granting the petitioner leave to file against the respondent, Dunkley Company (and the Michigan Canning & Machinery Company, if petitioner be advised that said company is a necessary or proper party plaintiff), in the United States District Court in and for the Northern District of California, Southern Division, Second Division, an original bill in the nature of a bill of review setting up the new matter referred to in this petition and seeking to have reviewed, reversed and set aside that certain interlocutory decree pronounced by said Court against said petitioner on the 8th day of December, 1916, in said case of *Dunkley Company*, Plaintiff, *vs. Central California Canneries Company*, Defendant, being Equity Case No. 201 in said court, and for such other relief as may be appropriate in the premises.

W. J. CARR,

FREDERICK S. LYON,

FRANCIS J. HENEY,

KEMPER CAMPBELL,

Solicitors and Counsel for Petitioner.

State of California,
County of Los Angeles,—ss.

Kemper B. Campbell, being first duly sworn on oath, deposes and says: That he is one of counsel for the petitioner in the foregoing petition; that he has read the foregoing petition and is familiar with the contents thereof, and has read the petition of Hunt Brothers Company referred to and incorporated therein by appropriate reference, and is familiar with the contents of said petition, and that the facts stated in the foregoing petition and in said petition of Hunt Brothers Company are true.

KEMPER B. CAMPBELL,

Subscribed and sworn to before me this 5th day of January, 1922.

[Seal]

L. BELLE WEAVER,

Notary Public in and for the County of Los Angeles,
State of California.

[Endorsed]: Original. In the United States Circuit Court of Appeals for the Ninth Circuit. Central California Canneries, a Corporation, Petitioner, vs. Dunkley Company, a Corporation, Respondent. Notice of Motion and Petition for Leave to File in the District Court of the United States in and for the Northern District of California, Southern Division, Second Division, an Original Bill in the Nature of a Bill of Review. Received copy of the within notice and petition this 6th day of January, 1922. Fred L. Chappell, and W. A. Richardson,

Counsel for Dunkley Co. and Michigan Canning & Mch'y Co.

In the United States Circuit Court of Appeals for
the Ninth Circuit.

GRIFFIN & SKELLEY COMPANY, a Corpora-
tion,

Petitioner,

vs.

DUNKLEY COMPANY, a Corporation,
Respondent.

Notice of Motion.

To Dunkley Company and Michigan Canning & Machinery Company, and to Messrs. Fred L. Chappell and W. A. Richardson, Counsel and Solicitors for said Companies:

YOU AND EACH OF YOU ARE HEREBY NOTIFIED that on February 6, 1922, at the hour of 10:30 A. M., or as soon thereafter as counsel can be heard, in the courtroom of the above-entitled court in the United States Post Office and Courthouse Building in the City and County of San Francisco, California, Griffin & Skelley Company will move the Court for an order permitting it to file a bill in the nature of a bill of review to have reviewed, reversed and set aside that certain interlocutory decree made and entered in the United States District Court for the Northern District of California, Southern Division, Second Division, on December 8, 1916, in the case of *Dunkley*

Company, Plaintiff, vs. *Griffin & Skelley Comapny*, Defendant, Equity No. 202, and to that end will present the petition for such leave accompanying this notice.

Said motion will be based upon the matters and things set forth in said petition, and on the record in the above-entitled Court, of *Central California Canneries Company*, a Corporation, *Griffin & Skelley Company*, *J. C. Ainsley Packing Company*, *Anderson-Barngrover Manufacturing Company*, *Golden Gate Packing Company*, *J. F. Pyle & Son, Incorporated*, *Hunt Brothers Company*, *Sunlit Fruit Company*, a Corporation, Appellants, vs. *Dunkley Company*, a Corporation, Appellee, No. 2915, including the record on appeal to said Court from the order of said District Court granting the motion of the Dunkley Company for a substitution or addition of parties plaintiff, and upon the record in this Court of *Dunkley Company and Michigan Canning & Machinery Company*, Plaintiffs-Appellants, vs. *Pasadena Canning Company and George E. Grier*, Defendants-Appellees, No. 3316.

W. J. CARR,
FREDERICK S. LYON,
FRANCIS J. HENEY,
KEMPER B. CAMPBELL,
Solicitors for Petitioner.

In the United States Circuit Court of Appeals for
the Ninth Circuit.

GRIFFIN & SKELLEY COMPANY, a Corpora-
tion,

Petitioner,

vs.

DUNKLEY COMPANY, a Corporation,

Respondent.

**Petition for Leave to File in the District Court
of the United States in and for the Northern
District of California, Southern Division, Sec-
ond Division, an Original Bill in the Nature
of a Bill of Review.**

To the Honorable Judges of said Court:

Griffin & Skelley Company, a corporation, pre-
sents this its petition against Dunkley Company, a
corporation, and respectfully shows:

I.

Petitioner hereby adopts and incorporates all of
the allegations, matters and things contained in the
petition of Hunt Brothers Company for leave to
file a bill in the nature of a bill of review, filed
concurrently herewith, to the same effect as if
herein set forth at length, substituting, however, the
name of petitioner for the name of Hunt Brothers
Company where the same appears in said petition,
and substituting the name of Hunt Brothers Com-
pany for the name of petitioner where the same
appears (except where reference is made to the title

of the record in this Court, of "*Central California Canneries Company, et al., Appellants, vs. Dunkley Company, Appellee, No. 2915*").

WHEREFORE, petitioner respectfully prays that this Honorable Court take cognizance of and examine the new matter herein referred to, and that an order be made by this Court granting the petitioner leave to file against the respondent, Dunkley Company (and the Michigan Canning & Machinery Company, if petitioner be advised that said company is a necessary or proper party plaintiff), in the United States District Court in and for the Northern District of California, Southern Division, Second Division, an original bill in the nature of a bill of review setting up the new matter referred to in this petition and seeking to have reviewed, reversed and set aside that certain interlocutory decree pronounced by said Court against said petitioner on the 8th day of December, 1916, in said case of *Dunkley Company, Plaintiff, vs. Griffin & Skelley Company, Defendant*, being Equity Case No. 202 in said court, and for such other relief as may be appropriate in the premises.

W. J. CARR,

FREDERICK S. LYON,

FRANCIS J. HENEY,

KEMPER B. CAMPBELL,

Solicitors and Counsel for Petitioner.

State of California,

County of Los Angeles,—ss.

Kemper B. Campbell, being first duly sworn on

oath, deposes and says: That he is one of counsel for the petitioner in the foregoing petition; that he has read the foregoing petition and is familiar with the contents thereof, and has read the petition of Hunt Brothers Company referred to and incorporated therein by appropriate reference, and is familiar with the contents of said petition, and that the facts stated in the foregoing petition and in said petition of Hunt Brothers Company are true.

KEMPER B. CAMPBELL.

Subscribed and sworn to before me this 5th day of January, 1922.

[Seal]

L. BELLE WEAVER,

Notary Public in and for the County of Los Angeles,
State of California.

[Endorsed]: Original. In the United States Circuit Court of Appeals for the Ninth Circuit. Griffin & Skelley, a Corporation, Petitioner, vs. Dunkley Company, a Corporation, Respondent. Notice of Motion and Petition for Leave to File in the District Court of the United States in and for the Northern District of California, Southern Division, Second Division, an Original Bill in the Nature of a Bill of Review. Received copy of the within notice and petition this 6th day of January, 1922. Fred L. Chappell, W. A. Richardson, Counsel for Dunkley Co. and Michigan Canning & Mch'y Co.

In the United States Circuit Court of Appeals for
the Ninth Circuit.

J. C. AINSLEY PACKING COMPANY, a Cor-
poration,

Petitioner,

vs.

DUNKLEY COMPANY, a Corporation,

Respondent.

Notice of Motion.

To Dunkley Company and Michigan Canning & Ma-
chinery Company, and to Messrs. Fred L. Chap-
pell and W. A. Richardson, Counsel and
Solicitors for said Companies:

YOU AND EACH OF YOU ARE HEREBY
NOTIFIED that on February 6, 1922, at the hour
of 10:30 A. M., or as soon thereafter as counsel can
be heard, in the courtroom of the above-entitled
court in the United States Post Office and Court-
house Building in the City and County of San Fran-
cisco, California, J. C. Ainsley Packing Company
will move the Court for an order permitting it to
file a bill in the nature of a bill of review to have
reviewed, reversed and set aside that certain inter-
locutory decree made and entered in the United
States District Court for the Northern District of
California, Southern Division, Second Division, on
December 8, 1916, in the case of *Dunkley Company*,
Plaintiff, vs. *J. C. Ainsley Packing Company*, De-

fendant, Equity No. 205, and to that end will present the petition for such leave accompanying this notice.

Said motion will be based upon the matters and things set forth in said petition, and on the record in the above-entitled court, of *Central California Canneries Company*, a Corporation, *Griffin & Skelley Company*, *J. C. Ainsley Packing Company*, *Ander-son-Barngrover Manufacturing Company*, *Golden Gate Packing Company*, *J. F. Pyle & Son, Incorporated*, *Hunt Brothers Company*, *Sunlit Fruit Company*, a Corporation, Appellants, vs. *Dunkley Company*, a Corporation, Appellee, No. 2915, including the record on appeal to said Court from the order of said District Court granting the motion of the Dunkley Company for a substitution or addition of parties plaintiff, and upon the record in this Court, of *Dunkley Company and Michigan Canning & Machinery Company*, Plaintiffs-Appellants, vs. *Pasadena Canning Company and George E. Grier*, Defendants-Appellees, No. 3316.

W. J. CARR,

FREDERICK S. LYON,

FRANCIS J. HENEY,

KEMPER B. CAMPBELL,

Solicitors for Petitioner.

In the United States Circuit Court of Appeals for
the Ninth Circuit.

J. C. AINSLEY PACKING COMPANY, a Corporation.

Petitioner,

vs.

DUNKLEY COMPANY, a Corporation,

Respondent.

**Petition for Leave to File in the District Court of
the United States in and for the Northern Dis-
trict of California, Southern Division, Second
Division, an Original Bill in the Nature of a
Bill of Review.**

To the Honorable Judges of said Court:

J. C. Ainsley Packing Company, a corporation,
presents this its petition against Dunkley Company,
a corporation, and respectfully shows:

I.

Petitioner hereby adopts and incorporates all of
the allegations, matters and things contained in the
petition of Hunt Brothers Company for leave to
file a bill in the nature of a bill of review, filed con-
currently herewith, to the same effect as if herein
set forth at length, substituting, however, the name
of petitioner for the name of Hunt Brothers
Company where the same appears in said petition,
and substituting the name of Hunt Brothers Com-
pany for the name of petitioner where the same ap-
pears (except where reference is made to the title of

the record of this Court of "*Central California Canneries Company et al.*, Appellants, *vs. Dunkley Company*, Appellee, No. 2915').

WHEREFORE, petitioner respectfully prays that this Honorable Court take cognizance of and examine the new matter herein referred to, and that an order be made by this Court granting the petitioner leave to file against the respondent, Dunkley Company (and the Michigan Canning & Machinery Company, if petitioner be advised that said company is a necessary or proper party plaintiff), in the United States District Court in and for the Northern District of California, Southern Division, Second Division, an original bill in the nature of a bill of review setting up the new matter referred to in this petition and seeking to have reviewed, reversed and set aside that certain interlocutory decree pronounced by said Court against said petitioner on the 8th day of December, 1916, in the said case of *Dunkley Company*, Plaintiff, *vs. J. C. Ainsley Packing Company*, Defendant, being Equity Case No. 205, in said Court, and for such other relief as may be appropriate in the premises.

W. J. CARR,

FREDERICK S. LYON,

FRANCIS J. HENEY,

KEMPER B. CAMPBELL,

Solicitors and Counsel for Petitioner.

State of California,

County of Los Angeles,—ss.

Kemper B. Campbell, being first duly sworn on

oath, deposes and says: That he is one of counsel for the petitioner in the foregoing petition; that he has read the foregoing petition and is familiar with the contents thereof, and has read the petition of Hunt Brothers Company referred to and incorporated therein by appropriate reference, and is familiar with the contents of said petition, and that the facts stated in the foregoing petition and in said petition of Hunt Brothers Company are true.

KEMPER B. CAMPBELL.

Subscribed and sworn to before me this 5th day of January, 1922.

[Seal] L. BELLE WEAVER,
Notary Public in and for the County of Los Angeles,
State of California.

[Endorsed]: Original. In the United States Circuit Court of Appeals for the Ninth Circuit. J. C. Ainsley Packing Co., a Corporation, Petitioner, vs. Dunkley Company, a Corporation, Respondent. Notice of Motion and Petition for Leave to File in the District Court of the United States in and for the Northern District of California, Southern Division, Second Division, an Original Bill in the Nature of a Bill of Review. Received Copy of the Within Notice and Petition this 6th day of January, 1922. Fred L. Chappell, W. A. Richardson, Counsel for Dunkley Co. and Michigan Canning & Mch'y Co.

In the United States Circuit Court of Appeals for
the Ninth Circuit.

ANDERSON-BARNGROVER MANUFACTUR-
ING COMPANY, a Corporation,

Petitioner,

vs.

DUNKLEY COMPANY, a Corporation,

Respondent.

Notice of Motion.

To Dunkley Company and Michigan Canning &
Machinery Company, and to Messrs. Fred L.
Chappell and W. A. Richardson, Counsel and
Solicitors for said Companies:

YOU AND EACH OF YOU ARE HEREBY
NOTIFIED that on February 6, 1922, at the hour
of 10:30 A. M., or as soon thereafter as counsel can
be heard, in the courtroom of the above-entitled
court in the United States Post Office and Court-
house Building in the City and County of San
Francisco, California, Anderson-Barngrover Manu-
facturing Company will move the Court for an or-
der permitting it to file a bill in the nature of a
bill of review to have reviewed, reversed and set
aside that certain interlocutory decree made and
entered in the United States District Court for the
Northern District of California, Southern Divi-
sion, Second Division, on December 8, 1916, in the
case of *Dunkley Company*, Plaintiff, vs. *Anderson-
Barngrover Manufacturing Company*, Defendant,

Equity No. 206, and to that end will present the petition for such leave accompanying this notice.

Said motion will be based upon the matters and things set forth in said petition, and on the record in the above-entitled court, of *Central California Canneries Company*, a Corporation, *Griffin & Skelley Company*, *J. C. Ainsley Packing Company*, *Anderson-Barngrover Manufacturing Company*, *Golden Gate Packing Company*, *J. F. Pyle & Son, Incorporated*, *Hunt Brothers Company*, *Sunlit Fruit Company*, a Corporation, Appellants, vs. *Dunkley Company*, a Corporation, Appellee, No. 2915, including the record on appeal to said Court from the order of said District Court granting the motion of the Dunkley Company for a substitution or addition of parties plaintiff, and upon the record in this Court of *Dunkley Company and Michigan Canning & Machinery Company*, Plaintiffs-Appellants, vs. *Pasadena Canning Company and George E. Grier*, Defendants-Appellees, No. 3316.

W. J. CARR,
 FREDERICK S. LYON,
 FRANCIS J. HENEY,
 KEMPER B. CAMPBELL,
 Solicitors for Petitioner.

In the United States Circuit Court of Appeals for
the Ninth Circuit.

ANDERSON-BARNGROVER MANUFACTUR-
ING COMPANY, a Corporation,
Petitioner,

vs.

DUNKLEY COMPANY, a Corporation,
Respondent.

**Petition for Leave to File in the District Court of
the United States in and for the Northern Dis-
trict of California, Southern Division, Second
Division, an Original Bill in the Nature of a
Bill of Review.**

To the Honorable Judges of said Court:

Anderson-Barngrover Manufacturing Company,
a corporation, presents this its petition against
Dunkley Company, a corporation, and respectfully
shows:

I.

Petitioner hereby adopts and incorporates all of
the allegations, matters and things contained in the
petition of Hunt Brothers Company for leave to file
a bill in the nature of a bill of review, filed concu-
rently herewith, to the same effect as if herein set
forth at length, substituting, however, the name of
petitioner for the name of Hunt Brothers Company
where the same appears in said petition, and sub-
stituting the name of Hunt Brothers Company for
the name of petitioner where the same appears (ex-

cept where reference is made to the title of the record in this Court of "*Central California Canneries Company, et al., Appellants, vs. Dunkley Company, Appellee, No. 2915*").

WHEREFORE, petitioner respectfully prays that this Honorable Court take cognizance of and examine the new matter herein referred to, and that an order be made by this Court granting the petitioner leave to file against the respondent, Dunkley Company (and the Michigan Canning & Machinery Company, if petitioner be advised that said company is a necessary or proper party plaintiff), in the United States District Court in and for the Northern District of California, Southern Division, Second Division, an original bill in the nature of a bill of review setting up the new matter referred to in this petition and seeking to have reviewed, reversed and set aside that certain interlocutory decree pronounced by said Court against said petitioner on the 8th day of December, 1916, in said case of *Dunkley Company, Plaintiff, vs. Anderson-Barngrover Manufacturing Company, Defendant*, being equity case No. 206, and for such other relief as may be appropriate in the premises.

W. J. CARR,

FREDERICK S. LYON,

FRANCIS J. HENEY,

KEMPER B. CAMPBELL,

Solicitors and Counsel for Petitioner.

State of California,
County of Los Angeles,—ss.

Kemper B. Campbell, being first duly sworn on oath, deposes and says: That he is one of counsel for the petitioner in the foregoing petition; that he has read the foregoing petition and is familiar with the contents thereof, and has read the petition of Hunt Brothers Company referred to and incorporated therein by appropriate reference, and is familiar with the contents of said petition, and that the facts stated in the foregoing petition and in said petition of Hunt Brothers Company are true.

KEMPER B. CAMPBELL.

Subscribed and sworn to before me this 5th day of January, 1922.

[Seal] L. BELLE WEAVER,
Notary Public in and for the County of Los Angeles, State of California.

[Endorsed]: Original. In the United States Circuit Court of Appeals for the Ninth Circuit. Anderson-Barngrover Mfg. Co., a Corporation, Petitioner, vs. Dunkley Company, a Corporation, Respondent. Notice of Motion and Petition for Leave to File in the District Court of the United States in and for the Northern District of California, Southern Division, Second Division, an Original Bill in the Nature of a Bill of Review. Received copy of the within notice and petition, this 6th day of January, 1922. Fred L. Chappell,

W. A. Richardson, Counsel for Dunkley Co. and Michigan Canning & Mch'y Co.

In the United States Circuit Court of Appeals for
the Ninth Circuit.

GOLDEN GATE PACKING COMPANY, a Corporation,

Petitioner,

vs.

DUNKLEY COMPANY, a Corporation,

Respondent.

Notice of Motion.

To Dunkley Company and Michigan Canning & Machinery Company, and to Messrs. Fred L. Chappell and W. A. Richardson, Counsel and Solicitors for said Companies:

YOU AND EACH OF YOU ARE HEREBY NOTIFIED that on February 6, 1922, at the hour of 10:30 A. M., or as soon thereafter as counsel can be heard, in the courtroom of the above-entitled court in the United States Post Office and Court-house Building in the City and County of San Francisco, California, Golden Gate Packing Company will move the Court for an order permitting it to file a bill in the nature of a bill of review to have reviewed, reversed and set aside that certain interlocutory decree made and entered in the United States District Court for the Northern District of California, Southern Division, Second Division, on

December 8, 1916, in the case of *Dunkley Company*, Plaintiff, vs. *Golden Gate Packing Company*, Defendant, Equity No. 209, and to that end will present the petition for such leave accompanying this notice.

Said motion will be based upon the matters and things set forth in said petition, and on the record in the above-entitled court, of *Central California Canneries Company*, a Corporation, *Griffin & Skelley Company*, *J. C. Ainsley Packing Company*, *Anderson-Barngrover Manufacturing Company*, *Golden Gate Packing Company*, *J. F. Pyle & Son, Incorporated*, *Hunt Brothers Company*, *Sunlit Fruit Company*, a Corporation, Appellants, vs. *Dunkley Company*, a Corporation, Appellee, No. 2915, including the record on appeal to said Court from the order of said District Court granting the motion of the Dunkley Company for a substitution or addition of parties plaintiff, and upon the record in this Court of *Dunkley Company and Michigan Canning & Machinery Company*, Plaintiffs-Appellants, vs. *Pasadena Canning Company and George E. Grier*, Defendants-Appellees, No. 3316.

W. J. CARR,
FREDERICK S. LYON,
FRANCIS J. HENEY,
KEMPER B. CAMPBELL,
Solicitors for Petitioner.

In the United States Circuit Court of Appeals for
the Ninth Circuit.

GOLDEN GATE PACKING COMPANY, a Cor-
poration,

Petitioner,

vs.

DUNKLEY COMPANY, a Corporation,

Respondent.

**Petition for Leave to File in the District Court
of the United States in and for the Northern
District of California, Southern Division, Sec-
ond Division, an Original Bill in the Nature
of a Bill of Review.**

To the Honorable Judges of said Court:

Golden Gate Packing Company, a corporation,
presents this its petition against Dunkley Com-
pany, a corporation, and respectfully shows:

I.

Petitioner hereby adopts and incorporates all
of the allegations, matters and things contained in
the petition of Hunt Brothers Company for leave
to file a bill in the nature of a bill of review, filed
concurrently herewith, to the same effect as if
herein set forth at length, substituting, however,
the name of petitioner for the name of Hunt Broth-
ers Company where the same appears in said
petition, and substituting the name of Hunt Broth-
ers Company for the name of petitioner where the
same appears (except where reference is made to

the title of the record in this Court of “*Central California Canneries Company, et al., Appellants, vs. Dunkley Company, Appellee, No. 2915*”).

WHEREFORE, petitioner respectfully prays that this Honorable Court take cognizance of and examine the new matter herein referred to, and that an order be made by this Court granting the petitioner leave to file against the respondent, Dunkley Company (and the Michigan Canning & Machinery Company, if petitioner be advised that said company is a necessary or proper party plaintiff), in the United States District Court in and for the Northern District of California, Southern Division, Second Division, an original bill in the nature of a bill of review setting up the new matter referred to in this petition and seeking to have reviewed, reversed and set aside that certain interlocutory decree pronounced by said Court against said petitioner on the 8th day of December, 1916, in said case of *Dunkley Company, Plaintiff, vs. Golden Gate Packing Company, Defendant*, being equity case No. 209, and for such other relief as may be appropriate in the premises.

W. J. CARR,

FREDERICK S. LYON,

FRANCIS J. HENRY,

KEMPER B. CAMPBELL,

Solicitors and Counsel for Petitioner.

State of California,

County of Los Angeles,—ss.

Kemper B. Campbell, being first duly sworn on

oath, deposes and says: That he is one of counsel for the petitioner in the foregoing petition; that he has read the foregoing petition and is familiar with the contents thereof, and has read the petition of Hunt Brothers Company referred to and incorporated therein by appropriate reference, and is familiar with the contents of said petition, and that the facts stated in the foregoing petition and in said petition of Hunt Brothers Company are true.

KEMPER B. CAMPBELL.

Subscribed and sworn to before me this 5th day of January, 1922.

[Seal]

L. BELLE WEAVER,

Notary Public in and for the County of Los Angeles, State of California.

[Endorsed]: Original. In the United States Circuit Court of Appeals for the Ninth Circuit. Golden Gate Packing Co., a Corporation, Petitioner, vs. Dunkley Company, a Corporation, Respondent. Notice of Motion and Petition for Leave to File in the District Court of the United States in and for the Northern District of California, Southern Division, Second Division, an Original Bill in the Nature of a Bill of Review. Received Copy of the Within Notice and Petition, this 6th day of January, 1922. Fred L. Chappell, W. A. Richardson, Counsel for Dunkley Co., and Michigan Canning & Mach'y Co.

In the United States Circuit Court of Appeals for
the Ninth Circuit.

J. F. PYLE & SON, INC., a Corporation,
Petitioner,

vs.

DUNKLEY COMPANY, a Corporation,
Respondent.

Notice of Motion.

To Dunkley Company and Michigan Canning &
Machinery Company, and to Messrs. Fred L.
Chappell and W. A. Richardson, Counsel and
Solicitors for said Companies:

YOU AND EACH OF YOU ARE HEREBY
NOTIFIED that on February 6, 1922, at the hour
of 10:30 A. M., or as soon thereafter as counsel
can be heard, in the courtroom of the above-en-
titled court in the United States Postoffice and
Courthouse Building in the City and County of
San Francisco, California, J. F. Pyle & Son, Inc.,
will move the Court for an order permitting it to
file a bill in the nature of a bill of review to have
reviewed, reversed and set aside that certain in-
terlocutory decree made and entered in the United
States District Court for the Northern District of
California, Southern Division, Second Division, on
December 8, 1916, in the case of *Dunkley Company*,
Plaintiff, vs. *J. F. Pyle & Son, Inc.*, Defendant,
Equity No. 210, and to that end will present the
petition for such leave accompanying this notice.

Said motion will be based upon the matters and things set forth in said petition, and on the record in the above-entitled court, of *Central California Canneries Company*, a Corporation, *Griffin & Skelley Company*, *J. C. Ainsley Packing Company*, *Anderson-Barngrover Manufacturing Company*, *Golden Gate Packing Company*, *J. F. Pyle & Son, Incorporated*, *Hunt Brothers Company*, *Sunlit Fruit Company*, a Corporation, Appellants, vs. *Dunkley Company*, a Corporation, Appellee, No. 2915, including the record on appeal to said Court from the order of said District Court granting the motion of the Dunkley Company for a substitution or addition of parties plaintiff, and upon the record in this court of *Dunkley Company and Michigan Canning & Machinery Company*, Plaintiffs-Appellants, vs. *Pasadena Canning Company and George E. Grier*, Defendants-Appellees, No. 3316.

W. J. CARR,
 FREDERICK S. LYON,
 FRANCIS J. HENEY,
 KEMPER B. CAMPBELL,
 Solicitors for Petitioner.

In the United States Circuit Court of Appeals for
 the Ninth Circuit.

J. F. PYLE & SON, INC., a Corporation,
 Petitioner,

vs.

DUNKLEY COMPANY, a Corporation,
 Respondent.

**Petition for Leave to File in the District Court
of the United States in and for the Northern
District of California, Southern Division, Sec-
ond Division, an Original Bill in the Nature
of a Bill of Review.**

To the Honorable Judges of said Court:

J. F. Pyle & Son, Incorporated, a corporation,
presents this its petition against Dunkley Company,
a corporation, and respectfully shows:

I.

Petitioner hereby adopts and incorporates all of
the allegations, matters and things contained in the
petition of Hunt Brothers Company for leave to file
a bill in the nature of a bill of review, filed concur-
rently herewith, to the same effect as if herein set
forth at length, substituting, however, the name of
petitioner for the name of Hunt Brothers Company
where the same appears in said petition, and substi-
tuting the name of Hunt Brothers Company for the
name of petitioner where the same appears (except
where reference is made to the title of the record
in this Court of "*Central California Canneries Com-
pany, et al., Appellants, vs. Dunkley Company, Ap-
pellee, No. 2915*").

WHEREFORE, petitioner respectfully prays
that this Honorable Court take cognizance of and
examine the new matter herein referred to, and that
an order be made by this Court granting the peti-
tioner leave to file against the respondent, Dunkley
Company (and the Michigan Canning & Machinery
Company, if petitioner be advised that said company

is a necessary or proper party plaintiff), in the United States District Court in and for the Northern District of California, Southern Division, Second Division, an original bill in the nature of a bill of review setting up the new matter referred to in this petition and seeking to have reviewed, reversed and set aside that certain interlocutory decree pronounced by said Court against said petitioner on the 8th day of December, 1916, in said case of *Dunkley Company*, Plaintiff, vs. *J. F. Pyle & Son, Inc.*, Defendant, being equity case No. 210, and for such other relief as may be appropriate in the premises.

W. J. CARR,

FREDERICK S. LYON,

FRANCIS J. HENEY,

KEMPER B. CAMPBELL,

Solicitors and Counsel for Petitioner.

State of California,

County of Los Angeles,—ss.

Kemper B. Campbell, being first duly sworn on oath, deposes and says: That he is one of counsel for the petitioner in the foregoing petition; that he has read the foregoing petition and is familiar with the contents thereof, and has read the petition of Hunt Brothers Company referred to and incorporated therein by appropriate reference, and is familiar with the contents of said petition, and that the facts stated in the foregoing petition and in said petition of Hunt Brothers Company are true.

KEMPER B. CAMPBELL.

Subscribed and sworn to before me this 5th day of January, 1922.

[Seal]

L. BELLE WEAVER,

Notary Public in and for the County of Los Angeles,
State of California.

[Endorsed]: Original. In the United States Circuit Court of Appeals for the Ninth Circuit. J. F. Pyle & Son, Inc., a Corporation, Petitioner, vs. Dunkley Company, a Corporation, Respondent. Notice of Motion and Petition for Leave to File in the District Court of the United States in and for the Northern District of California, Southern Division, Second Division, an Original Bill in the Nature of a Bill of Review. Received copy of the within notice and petition, this 6th day of January, 1922, Fred L. Chappell, W. A. Richardson, Counsel for Dunkley Co., and Michigan Canning & Mch'y Co.

In the United States Circuit Court of Appeals for
the Ninth Circuit.

SUNLIT FRUIT COMPANY, a Corporation,
Petitioner,

vs.

DUNKLEY COMPANY, a Corporation,
Respondent.

Notice of Motion.

To Dunkley Company and Michigan Canning & Machinery Company, and to Messrs. Fred L. Chappell and W. A. Richardson, Counsel and Solicitors for said Companies:

YOU AND EACH OF YOU ARE HEREBY NOTIFIED that on February 6, 1922, at the hour of 10:30 A. M., or as soon thereafter as counsel can be heard, in the courtroom of the above-entitled court in the United States Post Office and Courthouse Building in the City and County of San Francisco, California, Sunlit Fruit Company will move the Court for an order permitting it to file a bill in the nature of a bill of review to have reviewed, reversed and set aside that certain interlocutory decree made and entered in the United States District Court for the Northern District of California, Southern Division, Second Division, on December 8, 1916, in the case of *Dunkley Company*, Plaintiff, vs. *Sunlit Fruit Company*, Defendant, Equity No. 212, and to that end will present the petition for such leave accompanying this notice.

Said motion will be based upon the matters and things set forth in said petition, and on the record in the above-entitled court, of *Central California Canneries Company*, a Corporation, *Griffin & Skelley Company*, *J. C. Ainsley Packing Company*, *Ander-son-Barngrover Manufacturing Company*, *Golden Gate Packing Company*, *J. F. Pyle & Son, Incorporated*, *Hunt Brothers Company*, *Sunlit Fruit Com-pany*, a Corporation, Appellants, vs. *Dunkley Com-*

pany, a Corporation, Appellee, No. 2915, including the record on appeal to said Court from the order of said District Court granting the motion of the Dunkley Company for a substitution or addition of parties plaintiff, and upon the record in this Court of *Dunkley Company and Michigan Canning & Machinery Company*, Plaintiffs-Appellants, vs. *Pasadena Canning Company and George E. Grier*, Defendants-Appellees, No. 3316.

W. J. CARR,
FREDERICK S. LYON,
FRANCIS J. HENEY,
KEMPER B. CAMPBELL,
Solicitors for Petitioner.

In the United States Circuit Court of Appeals for
the Ninth Circuit.

SUNLIT FRUIT COMPANY, a Corporation,
Plaintiff,

vs.

DUNKLEY COMPANY, a Corporation,
Respondent.

**Petition for Leave to File in the District Court
of the United States in and for the Northern
District of California, Southern Division, Sec-
ond Division, an Original Bill in the Nature
of a Bill of Review.**

To the Honorable Judges of said Court:

Sunlit Fruit Company, a corporation, presents

this its petition against Dunkley Company, a corporation, and respectfully shows:

I.

Petitioner hereby adopts and incorporates all of the allegations, matters and things contained in the petition of Hunt Brothers Company for leave to file a bill in the nature of a bill of review, filed concurrently herewith, to the same effect as if herein set forth at length, substituting, however, the name of petitioner for the name of Hunt Brothers Company where the same appears in said petition, and substituting the name of Hunt Brothers Company for the name of petitioner where the same appears (except where reference is made to the title of the record in this Court of "*Central California Canneries Company et al.*, Appellants, vs. *Dunkley Company*, Appellee, No. 2915").

WHEREFORE, petitioner respectfully prays that this Honorable Court take cognizance of and examine the new matter herein referred to, and that an order be made by this Court granting the petitioner leave to file against the respondent, Dunkley Company (and the Michigan Canning & Machinery Company, if petitioner be advised that said company is a necessary or proper party plaintiff), in the United States District Court in and for the Northern District of California, Southern Division, Second Division, an original bill in the nature of a bill of review setting up the new matter referred to in this petition and seeking to have reviewed, reversed and set aside that certain interlocutory decree pronounced by said Court against said petitioner on the

8th day of December, 1916, in said case of *Dunkley Company*, Plaintiff, vs. *Sunlit Fruit Company*, Defendant, being Equity Case No. 212, and for such other relief as may be appropriate in the premises.

W. J. CARR,
FREDERICK S. LYON,
FRANCIS J. HENEY,
KEMPER B. CAMPBELL,

Solicitors and Counsel for Petitioner.

State of California,
County of Los Angeles,—ss.

Kemper B. Campbell, being first duly sworn on oath, deposes and says: That he is one of counsel for the petitioner in the foregoing petition; that he has read the foregoing petition and is familiar with the contents thereof, and has read the petition of Hunt Brothers Company referred to and incorporated therein by appropriate reference, and is familiar with the contents of said petition, and that the facts stated in the foregoing petition and in said petition of Hunt Brothers Company are true.

KEMPER B. CAMPBELL.

Subscribed and sworn to before me this 5th day of January, 1922.

[Seal] L. BELLE WEAVER,
Notary Public in and for the County of Los Angeles,
State of California.

[Endorsed]: Original. In the United States Circuit Court of Appeals for the Ninth Circuit. Sunlit Fruit Company, a Corporation, Petitioner, vs.

Dunkley Company, a Corporation, Respondent. Notice of Motion and Petition for Leave to File in the District Court of the United States in and for the Northern District of California, Southern Division, Second Division, an Original Bill in the Nature of a Bill of Review. Received copy of the within notice and petition this 6th day of January, 1922. Fred L. Chappell, W. A. Richardson, Counsel for Dunkley Co. & Michigan Canning & Mch. Co. Filed Jan. 6, 1922. F. D. Monckton, Clerk. By Paul P. O'Brien, Deputy Clerk.